Supreme Court, U.S.
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No. ____

In the Supreme Court of the United States

JACK E. ALDERMAN,

Petitioner,

v.

HILTON HALL,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

Whether a defendant receives the effective assistance of counsel guaranteed by the Sixth Amendment where a failure to understand relevant law leads counsel to limit his investigation of mitigating evidence and to omit a mitigation argument from the resentencing phase of a capital trial.

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PETITION FOR A WRIT OF CERTIORARI

Jack E. Alderman respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The Eleventh Circuit's denial of panel rehearing is *Alderman v. Terry*, No. 04-14595-P (11th Cir. Dec. 8, 2006). The Eleventh Circuit panel decision is *Alderman v. Terry*, 468 F.3d 775 (11th Cir. 2006). The Eleventh Circuit's granting of appealability is *Alderman v. Terry*, No. 04-14595-P (11th Cir. Jun. 27, 2005). The Eleventh Circuit's denial of appealability is *Alderman v. Schofield*, No. 04-14595-P (11th Cir. Nov. 15, 2004). The District Court's denial of appealability is *Alderman v. Schofield*, No. CV403-028 (S.D. Ga. Oct. 1, 2004). The District Court's denial of alteration and amendment is *Alderman v. Schofield*, No. CV403-028 (S.D. Ga. Aug. 3, 2004). The District Court decision denying Mr. Alderman relief is *Alderman v. Schofield*, No. CV403-028, 2004 U.S. Dist. LEXIS 30125 (S.D. Ga. July 16, 2004). Because this is a habeas corpus action by a prisoner in state custody, Petitioner has appended the post-conviction opinions of the Georgia Supreme Court, *Alderman v. Head*, 559 S.E.2d 72 (Ga. 2002), and the Superior Court of Butts County, *Alderman v. Head*, No. 94-V-720 (Ga. Super. Ct. Butts County Dec. 29, 1999). The above court decisions have been reprinted at pages 1a to 117a of the accompanying appendix ("App."). In addition, relevant parts of the transcripts, including exhibits thereto, of the state habeas evidentiary hearing conducted in the Superior Court of Butts County (May 5-6, 1999), and the resentencing

hearing conducted in the Superior Court of Chatham County (Mar. 26-31, 1984), are reprinted at App. 123a to 301a.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). This Court granted Petitioner an extension of time until May 7, 2007 in which to file this petition for a writ of certiorari. App. 118a. This petition is timely filed.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment to the United States Constitution provides in relevant part: "In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence." App. 120a.

The Fourteenth Amendment to the United States Constitution provides in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law." App. 120a.

28 U.S.C. § 2254(d) provides in relevant part:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim –

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly

established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. App. 122a.

STATEMENT OF THE CASE

A. Procedural History

On June 15, 1975, Mr. Alderman was convicted of murdering his wife and then sentenced to death in the Superior Court of Chatham County. On direct appeal, the Georgia Supreme Court affirmed his conviction and sentence. *Alderman v. State*, 246 S.E.2d 642 (Ga. 1978). Mr. Alderman sought state and federal post-conviction relief and ultimately was granted a new sentencing trial on January 10, 1983. *Alderman v. Austin*, 663 F.2d 558 (5th Cir. Unit B Dec. 1981); *Alderman v. Austin*, 695 F.2d 124 (5th Cir. Unit B Jan. 1983) (en banc).

Mr. Alderman was resentenced to death on April 1, 1984 in the Superior Court of Chatham County. The Georgia Supreme Court affirmed the death sentence. *Alderman v. State*, 327 S.E.2d 168 (Ga. 1985). Represented by resentencing counsel (counsel whose effictiveness is being challenged), Mr. Alderman sought habeas relief in state and federal court. The Eleventh Circuit upheld the denial of habeas relief. *Alderman v. Zant*, 22 F.3d 1541 (11th Cir. 1994).

In 1994, represented by new counsel, Mr. Alderman again sought habeas relief in the Superior Court of Butts County alleging for the first time ineffective assistance of counsel at

his resentencing trial and on direct appeal. Following an evidentiary hearing and submission of post-hearing briefs, the state court denied habeas relief on December 29, 1999. *Alderman v. Head*, No. 94-V-720 (Ga. Super. Ct. Butts County Dec. 29, 1999). App. 73a. The Georgia Supreme Court denied Mr. Alderman a Certificate of Probable Cause to Appeal on January 10, 2002, *Alderman v. Head*, 559 S.E.2d 72 (Ga. 2002), and then denied his Motion for Reconsideration on February 11, 2002, *Id.* App. 69a.

In February 2003, Mr. Alderman sought federal habeas review on his ineffective assistance of counsel claims. On July 16, 2004, the District Court denied all relief. *Alderman*, 2004 U.S. Dist. LEXIS 30125, at *41. App. 43a. The District Court then denied Mr. Alderman's timely filed Motion to Alter and Amend on August 3, 2004. *Alderman v. Schofield*, No. CV403-028 (Ga. Aug. 3, 2004). App. 41a. The District Court denied Mr. Alderman a Certificate of Appealability on October 1, 2004. *Alderman v. Schofield*, No. CV403-028 (Ga. Oct. 1, 2004). App. 39a.

On November 15, 2004, the Eleventh Circuit denied Mr. Alderman a Certificate of Appealability. *Alderman v. Schofield*, No. 04-14595-P (11th Cir. Nov. 15, 2004). App. 37a. On June 27, 2005, the Eleventh Circuit granted Mr. Alderman's Motion for Reconsideration and granted a Certificate of Appealability as to one issue: "Whether appellant was denied the effective assistance of counsel at the resentencing on the ground that counsel failed adequately to investigate, and present to the jury, appellant's social-history background." *Alderman v. Terry*, No. 04-14595-P (11th Cir. Jun. 27, 2005). App. 35a. On October 30, 2006, the Eleventh Circuit affirmed the District Court's denial of Mr. Alderman's requested relief. *Alderman v. Terry*, 468 F.3d 775 (11th Cir. 2006). App. 3a. Mr. Alderman sought panel rehearing, which

was denied on December 8, 2006. *Alderman v. Terry*, No. 04-14595-P (11th Cir. Dec. 8, 2006). App. 1a.

B. 1984 Resentencing Trial

The State of Georgia sought the death penalty at Mr. Alderman's 1984 resentencing trial ("RST"). App. 197a. The State asserted that the motive and manner in which Mr. Alderman murdered his wife constituted two aggravating circumstances, each of which independently warranted the death penalty: he (1) murdered his wife to obtain insurance money and (2) committed the murder in an "outrageously vile" or "inhuman" way. App. 199a-200a.

Terry Jackson and Michael Schiavone represented Mr. Alderman at the RST. App. 174a. Although another jury had already convicted Mr. Alderman of murder on June 15, 1975, lead counsel Jackson's strategy was to pursue a residual doubt defense: the jury should not sentence Mr. Alderman to death if they were not sure beyond a reasonable doubt that he committed the murder. App. 241a. Thus, counsel focused Mr. Alderman's defense on attacking the underlying conviction and discrediting the State's principal witness – Mr. Alderman's co-defendant, John Brown. App. 178a-93a; 242a-45a.

Counsel offered direct evidence and the testimony of character witnesses as indirect evidence of Mr. Alderman's innocence. App. 226a-27a. All of the defense's character witnesses testified that Mr. Alderman was not the type of person who would commit murder. Counsel called a number of corrections officers, friends, and co-workers, all of whom

testified to Mr. Alderman's good character.[1] App. 126a-36a; 139a-65a; 168a-72a. Mr. Alderman's father testified that his son had overcome significant hardship as a boy, including his mother's abandonment and a terrible eye injury.[2] App. 165a-68a. Mr. Alderman told the jury that his father's testimony established his good character as opposed to Brown's highly suspect character. App. 174a. Jackson argued that all of this testimony established reasonable doubt of Mr. Alderman's guilt. App. 174a-97a.

Counsel did not present these character witnesses' testimony as mitigation evidence. When asked by habeas counsel why he failed to ask these witnesses whether the jury should show Mr. Alderman mercy, Jackson responded: "I had no such reason." App. 229a-30a. Indeed, Jackson never asked the jury to show Mr. Alderman mercy based on the character evidence. App. 174a-97a. Instead, Jackson argued that the jury should re-evaluate the finding of guilt: "[w]e've shown you Jack Alderman was a good person at the time and that he had a good relationship with his wife at the time and think you doubt . . . John Brown's story." App. 194a. He told the jury that to sentence Mr. Alderman to death, "[y]ou've got to believe John Brown beyond a reasonable doubt . . . . Go back there and give that man the death penalty and you're going to . . . . wonder, was John Brown lying? You've got to have a doubt." App. 194a.

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[1] The corrections officers also testified that Mr. Alderman was obedient and well-behaved, and Mr. Alderman's friends and co-workers also testified that he was dependable, reliable, and active in church. App. 126a-36a; 139a-65a; 168a-72a.

[2] Dr. Smith, a psychiatrist who examined Mr. Alderman following his indictment and testified at the 1975 trial, consistently recounted the details of Alderman's eye injury. App. 138a.

Having heard no mitigation argument based on this evidence, the jury was instructed to consider mitigating circumstances in determining the appropriate punishment. App. 198a. The judge defined mitigating circumstances as those that "in fairness and mercy may be considered as extenuating or reducing the degree of moral culpability so as to justify a sentence of life imprisonment rather than a sentence of death." App. 198a. The judge explained that "[r]egardless of the presence or absence of aggravating circumstances, the jury has both the right and the authority to recommend mercy, which would require the Judge to impose a sentence of imprisonment for life." App. 198a.

C. 1999 Habeas Proceedings

Jackson testified at the habeas proceedings that the defense called Mr. Alderman's friends and co-workers to establish his truthfulness and the corrections officers to establish his good conduct in prison. App. 247a. Counsel thought that evidence of Mr. Alderman's good conduct might influence the jury to believe Mr. Alderman could not have committed the murder. App. 258a. Jackson admitted that he did not present any evidence at the RST outside the confines of his residual doubt theory. App. 226a-27a; 241a-42a; 247a-48a. Schiavone testified that counsel had no tactical or strategic reason not to go beyond this character evidence into the details of Mr. Alderman's life-history; rather, counsel thought that this character evidence "was the extent that [they] could go into at the time." App. 255a-56a.

As lead counsel, Jackson focused on locating and preparing witnesses who could testify directly to Mr. Alderman's innocence. App. 213a; 240a-41a. He delegated to Schiavone responsibility for locating and preparing the character witnesses who could offer indirect proof that Mr. Alderman

was not the type of person who could have murdered his wife. App. 250a-51a. Aware that Jackson was committed to a residual doubt defense, Schiavone directed the team's only two investigators to "go out to get character evidence in support of that [defense] . . . ." App. 252a. Schiavone did not direct the investigators to find any evidence that would support a mitigation argument. App. 251a-52a.

Jackson admitted that counsel failed to interview key witnesses, such as Mr. Alderman's sister, first wife, and teachers, who could have offered broader life-history evidence. App. 229a; 230a; 233a-35a. Jackson admitted that he did not have a tactical or strategic reason for not contacting those witnesses. App. 229a; 233a. After reviewing descriptive narratives of Mr. Alderman's life experiences as told by his father, sister, first wife, high school teacher, and two members of the clergy, Jackson also testified that he did not have any tactical or strategic reason for not presenting this evidence at the RST. App. 227a-28a; 254a-56a.

Jackson also admitted that counsel failed to collect relevant life-history records. Counsel did not gather Mr. Alderman's medical records pertaining to his eye injury and temporary blindness or his school records from the Georgia Academy for the Blind and Savannah High. App. 233a-38a. Jackson admitted that he did not have a tactical or strategic reason for not collecting and presenting these records at the RST. App. 238a.

Had counsel collected and presented this substantial life-history evidence, he could have made a compelling argument based on the emotional damage Mr. Alderman suffered as a result of his mother's abandonment and his difficult relationship with his absentee father. App. 272a-75a. Counsel could have told the jury of the hardships Mr. Alderman

endured as the result of his eye injury and temporary blindness. App. 261a-66a; 268a-70a; App. 276a-86a. Counsel could have shown the jury Mr. Alderman's educational records that revealed the traumatic psychological impact these life experiences had on him – he failed to develop a normal self concept and proper control of his instinctive impulses. App. 287a-301a.

Counsel then could have contrasted Mr. Alderman's bleak upbringing with proof of Mr. Alderman's rehabilitation while in prison. The uncontested evidence demonstrated that Mr. Alderman developed discipline, underwent a spiritual conversion, and had a positive impact on prison staff and on other prisoners, who regarded him as a mentor. App. 142a-46a; 147a-58a; App. 209a-12a; 214a-25a. Jackson testified that none of this life-history evidence was inconsistent with his residual doubt theory. App. 235a-38a; 240a. Schiavone admitted that the only reason they failed to pursue and offer this evidence was their erroneous belief that they could not present life-history evidence through character witnesses; rather, counsel believed that those witnesses could testify only to Mr. Alderman's truthfulness and good conduct. App. 254a-56a.

REASONS FOR GRANTING THE PETITION

The state court's conclusion that Mr. Alderman's counsel was not ineffective conflicts with this Court's decisions. This Court has enforced a constitutional duty to perform a reasonable investigation to identify relevant mitigating evidence *and* to make a reasoned strategic judgment regarding use of that evidence at a sentencing trial. *See Wiggins v. Smith*, 539 U.S. 510, 533-35 (2003). Counsel here failed to do either. The Eleventh Circuit therefore misapplied the relevant law in upholding the state court's decision. Further, the Eleventh

Circuit's conclusion that counsel's errors were not so serious as to deprive Mr. Alderman of a fair trial, *Alderman*, 468 F.3d at 795, conflicts with this Court's admonition that sentencing juries must give meaningful consideration and effect to all mitigating evidence that might provide a basis for refusing to impose the death penalty. *See, e.g., Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (plurality opinion).

I. COUNSEL'S INVESTIGATION WAS UNREASONABLE BECAUSE IT WAS LIMITED TO A NARROW SET OF SOURCES AND COUNSEL MADE NO ATTEMPT TO GATHER MITIGATING EVIDENCE

Strickland v. Washington, 466 U.S. 668 (1984) established the guiding principles the lower courts must apply in evaluating the effectiveness of counsel. An ineffective assistance of counsel claim has two components: petitioner must show that counsel's performance was deficient and that the deficiency prejudiced the defendant. *Id.* at 687. To establish deficient performance, a petitioner must demonstrate that counsel's representation "fell below an objective standard of reasonableness:"

> [C]ounsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.

Wiggins, 539 U.S. at 521-22 (quoting *Strickland*, 466 U.S. at 688, 690-91). This Court has emphasized that "[t]he proper measure of attorney performance remains reasonableness under

prevailing professional norms." *Id.* at 521 (internal quotations omitted).

Counsel's performance fell below an objective standard of reasonableness for two reasons. First, his investigation was limited to a narrow set of sources, which violated prevailing professional norms on which this Court has relied in Sixth Amendment cases. Second, counsel limited his investigation only because he misunderstood the applicable law. The courts below misapplied *Strickland* to these facts, and improperly held that counsel's deficient performance did not violate Mr. Alderman's Sixth Amendment rights.

A. Counsel Unreasonably Limited The Scope Of His Investigation To Information About Mr. Alderman's Good Character

In assessing the reasonableness of counsel's investigation, a court must consider not only the quantum of evidence known to counsel, but also whether that evidence would lead a reasonable attorney to investigate further. *Wiggins*, 539 U.S. at 527. Here, counsel knew he had obtained no more than a rudimentary knowledge of Mr. Alderman's life-history from the character witnesses, and the evidence he did gather was more than sufficient to lead a reasonable attorney to investigate further. Moreover, counsel admittedly did not attempt to gather more information about Mr. Alderman's life-history, not because he strategically concluded that this information would not be helpful, but because he did not know that he could go beyond character evidence and gather and present mitigating evidence of Mr. Alderman's life-history. App. 254a-56a.

1. Counsel Had An Obligation To Look Beyond A Narrow Set Of Sources

This case is not materially different from *Wiggins*. Counsel there investigated Wiggins' background by obtaining only his social service records and a Pre-Sentence Investigation report, which included a brief account of his "personal history." *Wiggins*, 539 U.S. at 523. The Court held that this investigation was unreasonable because it developed only a "rudimentary knowledge of [the defendant's] history from a narrow set of sources." *Id.* at 524. The Court held that effective counsel would have gathered much more background information, such as that described in a post-conviction social history report, which used "social services, medical, and school records, as well as interviews with [the defendant] and numerous family members" to "chronicle[] [the defendant's] bleak life history." *Id.* at 516.

Counsel here obtained only a rudimentary knowledge of Mr. Alderman's life-history; indeed, counsel made no attempt to discover much, if anything, about it. Rather, counsel investigated only a narrow set of sources for an extraordinarily limited purpose: to testify to Mr. Alderman's good character in support of a residual doubt defense. Counsel did not attempt to gather "social services, medical, and school records," and showed no interest in learning of Mr. Alderman's "bleak life history." *Cf. id.* This was particularly unreasonable because counsel easily could have obtained mitigating evidence of Mr. Alderman's life-history from dozens of readily available sources, including Mr. Alderman's family and friends. Schiavone's only explanation was that counsel "just probably didn't ask them." App. 255a. Jackson admitted that their failure to contact Mr. Alderman's sister, first wife, or any of Mr. Alderman's teachers was not based on any tactical or strategic decision. App. 229a; 233a.

Counsel had no legitimate reason to conduct such a truncated investigation. There was no evidence suggesting that "a mitigation case, in its own right, would have been counterproductive, or that further investigation would have been fruitless[.]" *Wiggins*, 539 U.S. at 525. As in *Wiggins*, "this case is therefore distinguishable from [Supreme Court] precedents in which [this Court has] found limited investigations into mitigating evidence to be reasonable." *Id.*; *see, e.g.*, *Burger v. Kemp*, 483 U.S. 776, 794 (1987) (concluding counsel's limited investigation was reasonable because he interviewed all witnesses brought to his attention, discovering little that was helpful and much that was harmful); *Darden v. Wainwright*, 477 U.S. 168, 186 (1986) (concluding that counsel engaged in extensive preparation and the decision to present a mitigation case would have resulted in the jury hearing evidence that petitioner had been convicted of violent crimes and spent much of his life in jail).

2. Counsel Ignored Prevailing Professional Norms

Counsel's limited investigation did not satisfy prevailing professional norms. The ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases provide that counsel should investigate a capital defendant's background for "all reasonably available mitigating evidence," including evidence of his "medical history, educational history, employment and training history, *family and social history* . . . and religious and cultural influences." *Wiggins*, 539 U.S. at 524 (citing ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 11.8.6, p.113 (1989)) (emphasis in original).[3] This Court has held that

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[3] *See also* 1 ABA Standards for Criminal Justice 4-4.1, commentary, p. 4-55 (2d ed. 1982).

counsel who did not adhere to these prevailing professional norms violated a defendant's Sixth Amendment rights:

> Our opinion in *Williams v. Taylor* is illustrative of the proper application of these standards. In finding Williams' ineffectiveness claim meritorious, we applied *Strickland* and concluded that counsel's failure to uncover and present voluminous mitigating evidence at sentencing could not be justified as a tactical decision to focus on Williams' voluntary confessions, because counsel had not "fulfill[ed] their obligation to conduct a thorough investigation of the defendant's background." 529 U.S. at 396 (citing ABA Standards for Criminal Justice 4.4.1, commentary, p. 4-55 (2d ed. 1980)). . . . In highlighting counsel's duty to investigate, and in referring to the ABA Standards for Criminal Justice as guides, we applied the same "clearly established" precedent of *Strickland* we apply today.

Wiggins, 539 U.S. at 522 (quoting *Williams v. Taylor*, 529 U.S. 362, 396 (2000).

Counsel admitted that he made no attempt to find the evidence set forth in the ABA Guidelines. App. 227a-29a; 238a; 265a. Yet evidence of Mr. Alderman's medical history, educational history, employment and training history, family and social history, and religious and cultural influences was readily available to counsel, just as it was in *Wiggins*. That all of this evidence was introduced at the habeas proceedings shows that counsel only had to conduct a reasonable investigation to find it. This case therefore is indistinguishable from *Wiggins*. Here, as there, counsel's failure to pursue this evidence violated the prevailing professional norms on which this Court has relied in evaluating effectiveness of counsel.

B. Counsel Made No Reasoned Strategic Or Tactical Decision To Limit His Investigation; Instead, He Did Not Understand That Relevant Law Permitted Him To Go Beyond Character Evidence To Gather And Present Mitigating Evidence Of Mr. Alderman's Life-History

Counsel arbitrarily limited his investigation because he misunderstood applicable law. This misunderstanding prevented counsel from "conduct[ing] the requisite, diligent investigation into his client's [] background and unique personal circumstances[.]" *Williams*, 529 U.S. at 415. (O'Connor, J. concurring). While a wide variety of information may constitute mitigating evidence,[4] including family history,[5] favorable prospects for rehabilitation,[6] poverty,[7] cooperation with authorities,[8] character,[9] and good behavior while awaiting trial,[10] counsel mistakenly thought that

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[4] *See generally* Craig M. Cooley, *Mapping the Monster's Mental Health and Social History: Why Capital Defense Attorneys and Public Defender Death Penalty Units Require the Services of Mitigation Specialists*, 30 OKLA. CITY U. L. REV. 23, 43-48 (2005).

[5] *Eddings v. Oklahoma*, 455 U.S. 104, 113 (1982).

[6] *Miller v. Wainwright*, 798 F.2d 426, 430-31 (11th Cir. 1986), *vacated on other grounds*, 480 U.S. 901 (1987).

[7] *Armstrong v. Dugger*, 833 F.2d 1430, 1433 (11th Cir. 1987).

[8] *Foster v. Strickland*, 707 F.2d 1339, 1347 (11th Cir. 1983).

[9] *Simmons v. South Carolina*, 512 U.S. 154, 163 (1994).

[10] *Skipper v. South Carolina*, 476 U.S. 1, 4-5 (1986).

he was limited to gathering and presenting evidence of Mr. Alderman's good character. App. 254a-56a.

Counsel admitted that their failure to go beyond character evidence was not based on a tactical or strategic decision. Asked to explain his tactical or strategic reasons for not eliciting details of Mr. Alderman's life-history, Schiavone responded: "No tactical or strategic reason I can think of, ... I mean I - I'm thinking the character evidence - we probably were thinking that that was the extent that we could go into at that time." App. 254a-56a. Jackson also admitted that he had no tactical or strategic reason not to ask these witnesses about Mr. Alderman's life experiences. App. 227a-29a.

C. The State Court's Decision Was Objectively Unreasonable Because The Court Did Not Assess Directly Whether Counsel's Limited Investigation Was Based On A Reasoned Strategic Or Tactical Decision

28 U.S.C. § 2254(d) states that an unreasonable application of this Court's precedent occurs when a state court "'identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts' of petitioner's case." *Wiggins*, 539 U.S. at 510 (quoting *Williams*, 529 U.S. at 413). That is, "the state court's decision must have been [not only] incorrect or erroneous [but] objectively unreasonable." *Id.* at 520-21.

The state court's application of *Strickland* was objectively unreasonable for several reasons.

First, the state court erroneously found that counsel conducted a thorough investigation of Mr. Alderman's background merely because he hired two investigators who

questioned a number of fact and character witnesses. *Alderman v. Head*, No. 94-V-720 at 25 (Ga. Super. Ct. Butts County Dec. 29, 1999). App. 107a-08a. The court failed to consider that the scope of counsel's investigation was limited to character evidence in support of a residual doubt theory and ignored readily available mitigating evidence of Mr. Alderman's life-history. *See Rompilla v. Beard*, 545 U.S. 374, 379, 388-89 (2005) (counsel's efforts to find mitigating evidence by interviewing the defendant, several family members, and consulting with three mental health experts did not excuse them from pursuing an obvious investigative area). The court failed to consider counsel's admissions that their failure to go beyond character evidence supporting a residual doubt defense was not based on a reasoned tactical or strategic decision, but rather a misunderstanding of applicable law. A strategy premised on a misunderstanding of applicable law cannot be a reasoned tactical or strategic decision under *Wiggins*, 539 U.S. at 533. *See Horton v. Zant*, 941 F.2d 1449, 1462 (11th Cir. 1991) (counsel's failure to do any investigation because of the mistaken notion that mitigating evidence was inappropriate indisputably fell below reasonable professional norms; counsel began to follow one path, based upon a misinterpretation of the law, without ever evaluating the merits of alternative paths); *Smith v. Stewart*, 189 F.3d 1004, 1010 (9th Cir. 1999) (counsel's decision not to pursue mitigating evidence was not "strategic" where it was based on a lack of understanding of what constituted mitigating evidence).

Second, the state court found that "trial counsel presented substantial evidence *in mitigation*." *Alderman v. Head*, No. 94-V-720 at 25 (Ga. Super. Ct. Butts County Dec. 29, 1999) (emphasis added). App. 108a. To the contrary, counsel offered no mitigation defense at the RST. App. 174a-97a. The court ignored the fact that counsel offered character evidence only for the purpose of establishing residual doubt of Mr.

Alderman's guilt. The court's own words contradict its eroneous finding that substantial evidence was presented in mitigation:

> Mr. Jackson's adopted trial strategy was one of establishing residual doubt – that even though Alderman had already been found guilty, he argued the jury should not return a death sentence because there was still some residual doubt as to Alderman's culpability and involvement in the crime. (H.T. 100, 224). In furtherance of this trial strategy, in addition to directly attacking the state's case, Mr. Jackson presented witnesses to show that Alderman was not violent, and that he was well respected and trusted in the community and therefore would not have committed this type of crime. (H.T. 149, 224-225). ***To that end***, many people were contacted and considered as potential witnesses. Mr. Jackson also contacted many prison guards who could testify about Alderman's non-violent attitude while incarcerated.

Alderman v. Head, No. 94-V-720 at 19 (Ga. Super. Ct. Butts County Dec. 29, 1999) (emphasis added). App. 99a-100a. Thus, in the court's own words, Jackson contacted potential witnesses only in support of his residual doubt defense.

Third, the state court erroneously concluded that Jackson's residual doubt defense was reasonable because a "mercy" strategy would have been incompatible with the evidence presented in support of residual doubt. *Alderman v. Head*, No. 94-V-720 at 23 (Ga. Super. Ct. Butts County Dec. 29, 1999). App. 105a. This conclusion directly conflicts with this Court's conclusion in *Wiggins* that mitigation and residual doubt are not mutually exclusive sentencing strategies. 539 U.S. at 535;

see also Chandler v. United States, 218 F.3d 1305, 1311 (11th Cir. 2000) (en banc).

Given the large volume of mitigating evidence of Mr. Alderman's life-history counsel failed to gather and present, the state court's decision was objectively unreasonable because not only did it unreasonably apply this Court's precedent, but it also relied on erroneous factual findings that counsel (1) conducted a thorough investigation and (2) presented substantial evidence in mitigation. *See Wiggins*, 539 U.S. at 528 ("partial reliance on an erroneous factual finding further highlights the unreasonableness of the state court's decision"). In *Williams*, this Court held that counsel was ineffective because he failed to obtain the defendant's juvenile records. That the records contained harmful information was immaterial: "[o]f course not all of the [] [unpresented] evidence was favorable to Williams. . . . But . . . failure to introduce the comparatively voluminous amount of evidence that did speak in Williams' favor was not justified by a tactical decision" because counsel did not adequately investigate and therefore did not know what the evidence was. *Williams*, 529 U.S. at 396; *accord Wiggins*, 539 U.S. at 522.

Here, as in *Williams*, counsel could not have made a reasoned strategic or tactical decision not to obtain and introduce mitigating evidence of Mr. Alderman's life-history evidence because he did not know what that evidence was. The state court's focus on the two investigators and the character evidence presented in support of the defense's residual doubt defense therefore was misplaced. The court should have focused on counsel's failure to gather and present the comparatively voluminous amount of mitigating evidence of Mr. Alderman's life-history evidence, both records and witness testimony, that was revealed to the court for the first time at the habeas proceedings. The state court failed to do so.

In concluding that counsel performed reasonably and effectively in their representation of Mr. Alderman, the state court's application of *Strickland* was objectively unreasonable. Section 2254(d) thus poses no bar to this Court granting Mr. Alderman habeas relief.

D. The Eleventh Circuit Merely Accepted The Reasoning Of The State Court And Failed To Apply Strickland As Directed By This Court

The Eleventh Circuit failed to assess directly the reasonableness of counsel's decision to limit their investigation and presentation of mitigating evidence of Mr. Alderman's life-history. Instead, the Eleventh Circuit adopted a far stricter approach. It required Mr. Alderman to "'prove that the approach taken by counsel would not have been used by professionally competent counsel.'" *Alderman*, 468 F.3d at 792 (quoting *Harich v. Dugger*, 844 F.2d 1464, 1470 (11th Cir. 1988)) (abrogated on other grounds). The "approach" to which the court referred was not the failure to investigate or present mitigating evidence of Mr. Alderman's life-history, but counsel's residual doubt defense. The Eleventh Circuit's standard thus relieved counsel of the obligation this Court placed squarely on his shoulders – to demonstrate that his failure to investigate or present this mitigating evidence was based on a reasoned strategic or tactical decision.

Counsel's admissions that he made no such decision should have ended the analysis. Instead, the Eleventh Circuit determined that it could affirm the state court's ruling if other professionally competent counsel would have adopted counsel's residual doubt defense, regardless of whether that same counsel would have limited his investigation or presentation of voluminous mitigating evidence in the same way counsel did here. *Alderman*, 468 F.3d at 795. This turns

Strickland and its progeny on their heads, and it is for this reason that the Eleventh Circuit unreasonably misapplied this Court's holdings.

Further, the Eleventh Circuit's reliance on *Harich* is irreconcilable with its decision in *Collier v. Turpin*, 177 F.3d 1184 (11th Cir. 1999). In finding that counsel's performance during sentencing fell below professional standards and was therefore ineffective, the *Collier* court noted that "defense counsel did elicit testimony that Collier had a 'good' reputation, that he was generally known as a hard worker who took care of his family, and that he had a good reputation for truth and veracity." *Id.* at 1201. The Eleventh Circuit found, however, that counsel presented "no more than a [] shell of the testimony necessary for a 'particularized consideration of relevant aspects of the character and record of [a] convicted defendant before the imposition upon him of a sentence of death.'" *Id.* at 1201-02 (quoting *Woodson v. North Carolina*, 428 U.S. 280, 303 (1976)). The court further found that "[a]lthough counsel were aware of the Supreme Court's opinion in *Lockett*, and recognized that the sentencing phase was the most important part of the trial . . ., they presented almost none of the readily available evidence of Collier's background and character that would have led the jury to eschew the death penalty." *Id.* at 1202.

Counsel's performance here is indistinguishable from Collier's. While eliciting testimony of Mr. Alderman's good character at the RST in support of his residual doubt defense, counsel presented almost none of the readily available evidence of Mr. Alderman's background. Counsel's failure to present this evidence fell below professional standards, and thus, the assistance Mr. Alderman received at the RST violated his Sixth Amendment right to effective counsel.

II. COUNSEL UNREASONABLY OMITTED A MITIGATION ARGUMENT FROM THE RESENTENCING PHASE OF A CAPITAL TRIAL

The Eleventh Circuit's decision was objectively unreasonable because counsel's omitting a mitigation argument also must satisfy *Strickland's* performance standards requiring "reasonable professional judgment." *Strickland*, 466 U.S. at 690-91. While counsel's "strategic choices" made after a thorough investigation are virtually, but not absolutely, unchallengeable, *id.*, the failure to make any strategic decision, let alone a reasonable one, fails to satisfy the *Strickland* standard.

While counsel is entitled to make a strategic decision to forego a mitigation argument, winnow out some evidence to stress other evidence, or not use mitigation evidence that could be counterproductive or could provoke harmful cross-examination and rebuttal witnesses, *see Waters v. Thomas*, 46 F.3d 1506, 1512 (11th Cir. 1995); *Conklin v. Schofield*, 366 F.3d 1191, 1204 (11th Cir. 2004); *Chandler*, 218 F.3d at 1319, counsel here did not make such a strategic decision. Jackson admitted that his residual doubt defense did not prevent him from making a mitigation argument. App. 238a.

Moreover, Jackson simply ignored substantial mitigating evidence of Mr. Alderman's life-history, and by doing so, ignored this Court's admonition that sentencing juries must not be precluded from considering as a mitigating factor any aspect of a defendant's character proffered as a basis for a sentence less than death. *Lockett*, 438 U.S. at 604 (plurality opinion); *see Woodson*, 428 U.S. at 304 ("the fundamental respect for humanity underlying the Eighth Amendment . . . requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a

constitutionally indispensable part of the process of inflicting the penalty of death"); *see also Eddings v. Oklahoma*, 455 U.S. 104 (1982) (the sentencer in capital cases must be permitted to consider any relevant mitigating evidence); *Skipper v. South Carolina*, 476 U.S. 1 (1986) (same); *Spivey v. State*, 246 S.E.2d 288, 290-91 (Ga. 1978) ("Georgia law nowhere defines mitigating circumstances . . . . The conclusion is inescapable that the legislature meant to empower the jury to consider as mitigating anything they found to be mitigating, without limitation or definition.").

The character and life-history evidence presented at the RST and proffered at the habeas proceedings clearly supported a mitigation defense. *See, e.g., Simmons v. South Carolina*, 512 U.S. 154, 163 (1994) (character evidence); *Skipper*, 476 U.S. at 4-5 (evidence that defendant had adapted well to prison life); *Eddings*, 455 U.S. at 113 (evidence of 16-year old defendant's troubled family history and emotional disturbance); *Miller v. Wainwright*, 798 F.2d 426, 430-31 (11th Cir. 1986) (favorable prospects for rehabilitation), *vacated on other grounds*, 480 U.S. 901 (1987). Yet counsel failed to argue any of this evidence in support of a mitigation defense.

Counsel's failure to use this evidence in support of a mitigation defense was not based on a reasoned strategic decision. Indeed, counsel made no decision at all, reasonable or otherwise. To the extent mitigation evidence was presented at the RST, Jackson arbitrarily limited its use to show Mr. Alderman's good character in support of his residual doubt defense. When asked by habeas counsel why he failed to ask any of the defense's character witnesses whether the jury should show Mr. Alderman mercy, Jackson admitted that he had no such reason. App. 229a-30a. Jackson himself never asked the jury to show Mr. Alderman mercy based on any of this evidence, despite the judge's instructions that the jury

consider mitigating circumstances as extenuating or reducing the degree of Mr. Alderman's moral culpability to justify a life sentence. Instead of asking for mercy, Jackson told the jury that they should consider this evidence in deciding whether they believed Brown was lying about the murder. App. 194a-96a.

To the extent other mitigating evidence was available, *e.g.*, the substantial mitigating evidence of Mr. Alderman's life-history proffered at the habeas proceedings, counsel did not use it because he did not know about it; in fact, he made no attempt to gather and present it because he did not understand that relevant law permitted him to go beyond character evidence. Thus, counsel failed to properly use or simply ignored all of the reasonably available mitigating evidence in omitting a mitigation argument and thereby precluded the jury from considering Mr. Alderman's mitigating circumstances in determining the appropriate punishment. This violated Mr. Alderman's Sixth Amendment right to effective counsel.

III. THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS, MR. ALDERMAN'S RESENTENCING TRIAL JURY WOULD HAVE RETURNED A LIFE SENTENCE

To establish prejudice under *Strickland*, a defendant must show that there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Wiggins*, 539 U.S. at 534. Here, the existence of prejudice is clear, and had counsel performed competently there is a reasonable probability that the RST jury would have returned a life sentence. In reaching this conclusion, the Court need not make the state law evidentiary findings that would have been at issue at sentencing. *Id.* at

536. Rather, the Court need only evaluate the totality of the evidence – "'both that adduced at trial, and the evidence adduced in the habeas proceeding.'" *Id.* (quoting *Williams*, 529 U.S. at 397-98) (emphasis omitted).

A. Counsel's Omitting A Mitigation Argument Prejudiced Mr. Alderman

By framing the character and life-history evidence before the court as proof of Mr. Alderman's innocence, Jackson precluded the jury from performing their most critical function at capital sentencing – giving meaningful consideration and effect to all mitigating circumstances that might provide a basis for refusing to impose the death penalty.

To counter effectively the State's case for a death sentence, Jackson should have told the jury that they were obligated to consider Mr. Alderman's character and life-history evidence as mitigating factors supporting a life sentence. By failing to make that argument, Jackson prevented the jury from focusing on Mr. Alderman's particularized characteristics and offering a reasoned moral response to his character and life experiences. *See California v. Brown*, 479 U.S. 538, 545 (1987) (O'Connor, J., concurring) ("the sentence imposed at the penalty stage should reflect a reasoned *moral* response to the defendant's background, character, and crime") (emphasis in original). But for Jackson's failure, there is a reasonable probability that the jury would have given Mr. Alderman a life sentence.

B. Counsel's Limited Investigation And Presentation Of Readily Available Life-History Evidence Prejudiced Mr. Alderman

The state and federal appellate courts failed to give adequate consideration to the compelling mitigating evidence

the jury never heard. In evaluating the life-history evidence presented for the first time at the 1999 habeas proceedings in the form of live testimony, witness affidavits, and Mr. Alderman's medical and educational records, this Court should find that, but for counsel's unprofessional errors in not presenting it at the RST, there is a reasonable probability that the jury would have, placing the "totality of available [] evidence" on the mitigation side of the scale, struck a different balance and returned a life sentence. *Wiggins*, 539 U.S. at 534, 537.

Counsel did not tell the jury about Mr. Alderman's psychological trauma caused by childhood events. Testimony proffered at the habeas proceedings by Adlerman's sister would have revealed the emotional damage Mr. Alderman suffered as a result of his neglect. Mr. Alderman's sister, Theresa Callaway, testified that Mr. Alderman's mother never had any contact with them, and that she and Mr. Alderman moved in with their paternal grandparents. She testified that they were "not a very close family and there was little warmth or caring shown to us. . . . My daddy always worked a lot, and he drank a lot, so he really wasn't around very much. He spent very little time with me and Jackie. . . . He gave us no guidance and no control . . . ." App. 273a. Ms. Callaway asserted that she and Mr. Alderman were repeatedly reminded by their grandmother that she resented having to raise them. App. 274a.

Additional testimony proffered at the habeas proceedings by Mr. Alderman's father and through his medical records revealed the hardships caused by Mr. Alderman's eye injury and temporary blindness. Mr. Alderman's father recalled that "the violent attack and the loss of his eye had a profound affect on Jackie throughout his life. He was picked on at school by his peers. At times he would become discouraged and

depressed." App. 263a. Alderman's medical records indicated that when he was 15, he had "an increasing number of headaches" because he only used his right eye, and blurred vision in his right eye became so severe that it prevented him from reading. App. 278a-79a.

Counsel precluded the jury from giving meaningful consideration and effect to Mr. Alderman's bleak life-history revealed by his educational records. When Mr. Alderman transferred to the Georgia Academy for the Blind, his guidance counselor compiled a case history that showed Mr. Alderman was under the jurisdiction of the juvenile court, his father was frequently absent and threatened to commit suicide, and his step-grandfather went to stay with relatives in another town to relieve himself of the tension at home. App. 291a-94a. The school counselor assessed that Mr. Alderman was reluctant to accept responsibility, possibly the result of "meager parental control," and that he had a weak self image created by his weakening vision. App. 292a. Mr. Alderman was failing in school because of his blindness. App. 292a.

Mr. Alderman's experiences caused him to develop psychological infirmities that the jury could have considered in reducing the degree of his moral culpability. Repeated references to his being blind while attending public school caused him to develop an inferiority complex. App. 294a. The school counselor concluded that the weak relationship with his father and the lack of home support were a "threat to his development of a normal self concept and proper control of his instinctive impulses, causing the consequent development of a reluctance to submit to the binding restrictions placed on him by the society in which he lives." App. 294a.

Morever, Counsel deprived the jury of the chance to compare this bleak upbringing with Mr. Alderman's significant

moral and psychological development while he was an inmate. Martha Murphy Davis, a Presbyterian pastor and director of the Southern Prison Ministry in Georgia, met Mr. Alderman at the Georgia State Penitentiary in 1979.[11] She told the court:

> I've known people on the row who have had all different kinds of life experiences and different kinds of emotional responses to their life experience. And Jack has stood out in many, many ways; both in his relationships with other prisoners; prison staff[;] . . . his friends outside of prison; . . . his capacity through . . . all that he's been through, which has been a real legal and emotional roller coaster, to maintain a sense of focus and an amazing level of discipline.
>
> I think discipline is one of the real hallmarks that I would cite, [] physically . . . spiritually; intellectually.
>
> He reads very widely. He has . . . found a real home in the Catholic church and has found in the practice of his faith a way to sort of order his own life and order his days so that he understands how to -- how to structure his life around his faith commitment.

App. 217a.

Ms. Davis further described Mr. Alderman's spirituality as "[d]eep, mature, [and] focussed:"

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[11] Ms. Davis was instructed by counsel to confine her testimony to her observations and knowledge of Alderman prior to the RST. In response, Ms. Davis stated: "I've known him for 20 years so, you know, what happened before '84 and, you know, what happened afterwards I can't be entirely sure. But I'll do my best to do that. App. 218a.

> His spirituality has been such a warm and deep expression in his own life that he has – it's kind of spilled out to be a resource for other prisoners and for prison staff.
>
> . . . [Jack] has been in many instances a mentor to other people; and particularly younger guys coming into prison for the first time not knowing how to handle themselves; having, you know, the impulse to act quickly and without thinking.
>
> And I've seen on so many occasions Jack . . . take somebody under his wing and help them . . . learn how to live in that very difficult context without brutalizing each other.

App. 217a-19a.

Father Richard Paul Wise, the chaplain at the Georgia Diagnostic and Classification Center from 1980 to 1986, told the court that "Jack is an amazing man. . . . I respected Jack's wisdom. I respected his insight into things. I respected his religious commitment, . . . [h]e always had a strong desire to learn more." App. 205a-06a.

The totality of available evidence reveals that Mr. Alderman endured a deeply troubling childhood and failed to develop a normal self concept, proper control of his instinctive impulse, and an ability to submit to societal restrictions. Yet, in prison he developed positive relationships with family and friends outside of prison. He demonstrated physical, spiritual, and intellectual growth and discipline. Mr. Alderman mentored new prisoners who came into prison "having . . . the impulse to act quickly and without thinking[,]" and taught them

how to live in that restrictive environment without brutalizing others. App. 218a-20a.

This is a compelling mitigation case that counsel should have made and that the state and federal appellate courts should have considered to ensure a reliable result. As this Court stated in *Strickland*:

> [T]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results.

466 U.S. 696. By failing to present evidence of Mr. Alderman's life-history that would have mitigated his sentence, counsel precipitated a "breakdown in the adversarial process." *See Collier*, 177 F.3d at 1204. The RST jury was charged with deciding whether a man unknown to them should live or die, but they did not have the life-history evidence necessary to balance the seriousness of his crime with the conditions of Mr. Alderman's life. *Id.* Had the jury been able to do so, it is at least reasonably probable that they would have returned a life sentence.

CONCLUSION

This Court should issue its writ of certiorari and review the decision of the Eleventh Circuit.

Respectfully Submitted,

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APPENDIX

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 04-1495-P

JACK E. ALDERMAN,

Petitioner-Appellant,

v.

WILLIAM TERRY, Warden,

Respondent-Appellee.

Dec. 8, 2006, Decided

On Appeal from the United States District Court for the Southern District of Georgia

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BEFORE: TJOFLAT, ANDERSON and CARNES, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by appellant, Jack E. Alderman, is Denied.

ENTERED FOR THE COURT:

/s/

UNITED STATES CIRCUIT JUDGE ORD-41

APPENDIX B

UNITED STATES COURT OF APPEALS

ELEVENTH CIRCUIT

Case No. 04-14595

JACK E. ALDERMAN,

Petitioner-Appellant,

v.

WILLIAM TERRY, Warden,

Respondent-Appellee.

October 30, 2006, Decided

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA

Before TJOFLAT, ANDERSON, and CARNES, Circuit Judges.

TJOFLAT, Circuit Judge:

1 The petitioner, Jack E. Alderman, is a Georgia prisoner on death row, having been convicted of the 1974 murder of his wife, Barbara J. Alderman, in the Superior Court of Chatham County, Georgia. On July 16, 2004, the United States District

Court for the Southern District of Georgia denied his petition for a writ of habeas corpus, and he appealed. We granted his application for a certificate of appealability as to one issue: whether Alderman's trial attorneys denied him the effective assistance of counsel in the penalty phase of his sentencing proceedings by failing to investigate and present to the jury his social – history background.

2 From the time of the murder to the present appeal, this case has extended over thirty-two years. Needless to say, the procedural history of this case is extensive and complex. For the sake of clarity, we organize the opinion as follows: part I provides the factual background and procedural history of the case; part II focuses on Alderman's 1984 re-sentencing trial; part III outlines Alderman's ineffective assistance claim, the evidence presented to the Superior Court of Butts County, Georgia at the evidentiary hearing it held on the claim, and that court's findings of fact and conclusions of law; part IV spells out Alderman's challenge to those findings and conclusions and explains why we cannot overturn them and, therefore, must deny the relief that Alderman seeks.

I.

A.

3 The following statement of facts is an excerpt from Alderman v. Zant, 22 F.3d 1541, 1544-46 (11th Cir.1994).

The Petitioner, Jack E. Alderman ("Alderman"), and his wife, Barbara Alderman ("Mrs. Alderman"), lived in an apartment in Chatham County [,] Georgia. Alderman was employed as an assistant manager at the local Piggly Wiggly supermarket. Mrs. Alderman was employed in the Tax Assessor's office for the City of Savannah. In conjunction with her employment, Mrs. Alderman maintained a $10,000.00

life insurance policy that paid double benefits in the event of accidental death. Mrs. Alderman also had another life insurance policy in the amount of $25,000.00 which named her mother as beneficiary.

Alderman met John Arthur Brown ("Brown"), later convicted as an accessory to Mrs. Alderman's murder, when both Alderman and Brown were employed in the vehicle maintenance department for the City of Savannah. Brown testified that on September 19, 1974, Alderman phoned Brown and asked him to meet him at the Piggly Wiggly supermarket. Brown stated that during this meeting Alderman asked Brown to kill Mrs. Alderman in exchange for half the insurance proceeds. Brown, although claiming not to take Alderman seriously, accepted the proposition.

On Saturday, September 21, 1974, Alderman asked Brown to come to his apartment. When Brown arrived, Alderman handed Brown a twelve-inch crescent wrench and instructed Brown to go into the bedroom and kill Mrs. Alderman. Testimony indicates that Brown was initially reluctant, but agreed to strike Mrs. Alderman when persuaded by the gun wielding Alderman. Brown entered the dining room and struck Mrs. Alderman in the head with the wrench. Mrs. Alderman cried out and ran into the living room where she confronted her husband. Alderman tackled Mrs. Alderman, then assisted by Brown, placed his hands over Mrs. Alderman's nose and mouth until she was unconscious.

Alderman and Brown carried Mrs. Alderman's limp body to the bathroom and placed it in the bathtub. Alderman started to fill the tub while Brown cleaned the blood stains from both the living and dining rooms. Alderman and Brown changed clothes and left the apartment for several hours. The two men went to the Piggly Wiggly supermarket where Alderman borrowed $100.00. Alderman and Brown then went to two

local Savannah bars. At some time during the evening Alderman gave Brown the $100.00.

Alderman and Brown returned to the apartment around 10:00 p.m., removed Mrs. Alderman's body from the bathtub and wrapped it in a green quilt. The two men carried the body to Alderman's 1974 Pontiac and placed it in the trunk. Brown drove Alderman's car as Alderman followed on his motorcycle. Alongside a creek in Rincon, Georgia, Brown and Alderman removed the body from the trunk and placed it in the driver's seat. At Alderman's direction, Brown reached in the driver's window and released the emergency brake allowing the car to roll into the creek. The car stopped halfway into the creek. Again at Alderman's direction, Brown opened the car door, pulled Mrs. Alderman's body halfway out and allowed her face to fall into the creek. The two men removed the green quilt and the rubber trunk mat from the car and fled the scene on Alderman's motorcycle.

Later that evening, on September 21, 1974, Randy Hodges ("Hodges") and Terry Callahan ("Callahan") were driving home on Baker Hill Road and Highway 131. As they turned onto Highway 131 and approached Dasher's Creek, they noticed a car in the creek. Hodges jumped out, saw that there was a woman in the car and sent Callahan to Lamar Rahn's house to call for help. Effingham County Sheriff Lloyd Fulcher ("Fulcher") responded to the call. Upon his arrival at the scene, Fulcher found the victim's car in the water adjacent to the bridge. Fulcher noticed no apparent physical damage to the car. He ordered Mrs. Alderman's body to be removed from the car and taken to the hospital. Fulcher observed that there were no skid marks from the car but that motorcycle tracks were apparent in the area. Fulcher also noticed blood stains on the seat of the car and that the trunk mat was missing.

At the direction of Fulcher, Garden City police officer J.D. Crosby ("Crosby") went to Alderman's apartment only to find it locked. Crosby later returned to the apartment at approximately 2:30 a.m. and found Alderman there with a woman. Crosby informed Alderman that his wife had been involved in a traffic accident, and asked him to accompany Effingham County authorities to the hospital. Georgia Bureau of Investigation Agent H.H. Keadle ("Keadle") was present at the Effingham County hospital. Keadle and Fulcher noticed red/brown stains in the seat and crotch of Alderman's pants and on his belt. At that time, Alderman's clothes were taken from him.

Keadle's investigation confirmed Crosby's findings at the accident scene. Keadle also recovered a stained portion of a green rug and Alderman's motorcycle helmet, which had been removed from Alderman's apartment by Mrs. Alderman's mother. Alderman's father, Jack Alderman, Sr., also gave the police the twelve inch crescent wrench that he had removed from Alderman's apartment.

Forensic Serologist Elizabeth Quarles, of the Georgia State Crime Laboratory, examined the blood found on Alderman's clothes. The blood type was consistent with Mrs. Alderman's blood. An examination of the vehicle revealed one palm print and four fingerprints which were stipulated as Alderman's. Brown's fingerprints, however, were not found on the car.

Dr. Charles Sullinger ("Dr. Sullinger") performed the autopsy upon Mrs. Alderman's body. Dr. Sullinger concluded that the laceration on the back of Mrs. Alderman's head was inflicted by a blunt instrument. Dr. Sullinger also concluded that because there existed only a small amount of blood in the car, the blow to Mrs. Alderman's head did not occur as a result of the accident. Dr. Sullinger found no evidence of any abnormalities in the heart, no scratches on the forearms and no

evidence of strangulation. Dr. Sullinger concluded that the liquid in Mrs. Alderman's lungs revealed that Mrs. Alderman died as a result of asphyxia due to drowning.

Keadle's investigation led him to Brown. Brown eventually gave a statement incriminating himself and Alderman. At trial, Alderman testified on his own behalf and denied that he killed his wife. Alderman testified that on the night of September 21, 1974, he and his wife had an argument and that he left the apartment alone. He allegedly took a bus to Savannah where he spent some time at two local bars. Alderman testified that he returned home at approximately 10:00 p.m. but his wife was not at home. Alderman decided to go to Rincon, Georgia to see if Mrs. Alderman was at her grandparent's home. A more complete version of Alderman's defense may be found in Alderman v. State, 241 Ga. 496, 246 S.E.2d 642, 644-45, cert. denied, 439 U.S. 991, 99 S.Ct. 593, 58 L.Ed.2d 666 (1978), reh'g denied, 439 U.S. 1122, 99 S.Ct. 1036, 59 L.Ed.2d 84 (1979).

Alderman testified that on his way to Rincon, he observed his car on the side of the bridge at Dasher's Creek. Alderman stopped his motorcycle and went to the car where he discovered his wife's body. Alderman stated that he picked up Mrs. Alderman's head and placed it in his lap. Upon hearing a noise, Alderman fled the scene in shock and fear. Alderman allegedly forgot about his wife's body, drove to Savannah and returned to a local bar. Alderman then went to Johnny Ganem's for breakfast with friends. While at breakfast, Alderman offered Gerlina Carmack (the female present in the Alderman's apartment when Officer J.D. Crosby arrived) a ride home. Alderman had allegedly stopped at his apartment to pick up a jacket when the police arrived and took him to the hospital where he identified his wife's body.

Alderman testified that he did not know why he had left his wife's body in the creek; that he recalled nothing of his trip back to Savannah; and, the fact that his wife was dead had completely left his mind. Appellant testified that he first realized the full facts surrounding his wife's death after being treated by a psychiatrist who was able to refresh his memory as to the events surrounding her death. He further testified that after being treated by the psychiatrist he realized that fear had caused him to leave his wife's body in the creek because he knew her family would blame him for her death.

B.

4.As noted supra, on July 16, 2004, the district court denied Alderman's application for a writ of habeas corpus. Alderman v. Schofield, No. CV403-028 at 5-9 (S.D.Ga. July 16, 2004). In its dispositive order, the court recounted the procedural history of this case – the prosecution in the Chatham County Superior Court, the appeals to the Georgia Supreme Court, the collateral attacks in the Butts County Superior Court, and the habeas proceedings in federal court.

On June 14, 1975, Petitioner was convicted in the Superior Court of Chatham County for killing his wife, and then he was sentenced to death. Following his conviction, he appealed to the Georgia Supreme Court, which denied his appeal on June 27, 1978. Certiorari was later denied by the United States Supreme Court on November 27, 1978. He then filed for state habeas relief in the Superior Court of Chatham County, Georgia. In June 1979, the Georgia Supreme Court denied Petitioner a certificate of probable cause to appeal. The United States Supreme Court denied certiorari on February 19, 1980, and denied a rehearing on March 19, 1980.

Petitioner then filed an application for habeas relief in federal district court on June 27, 1980. This first round of

federal habeas appeals culminated in 1983 when the Fifth Circuit, Unit B, acting en banc, granted a new sentencing trial, which began in March 1984. After his re-sentencing trial, Petitioner was again sentenced to death on April 1, 1984. He then filed a motion for new trial and an amendment thereto, which were denied in an order filed on August 27, 1984. Petitioner directly appealed his death sentence to the Georgia Supreme Court, which affirmed his new death sentence on February 28, 1985. On October 15, 1985, the United States Supreme Court denied certiorari and later denied a rehearing on November 18, 1985.

Petitioner then began a second round of habeas appeals in the state and federal courts with the same attorneys who represented him at the re-sentencing trial. He filed a state habeas petition in the Superior Court of Butts County on February 6, 1986. An amended habeas petition was filed June 16, 1987, and a second amended habeas petition was filed June 25, 1987. Following an evidentiary hearing on June 29, 1987, the state habeas court dismissed the petition on September 10, 1987, holding that all of Petitioner's claims were barred from review because of procedural default. On October 28, 1987, the Georgia Supreme Court denied the application for a certificate of probable cause to appeal. The United States Supreme Court subsequently denied certiorari on March 7, 1988, and denied a rehearing on April 25, 1988.

Petitioner then filed a petition for habeas relief in federal district court on June 23, 1988. The federal petition was denied at the trial level on June 6, 1989, without an evidentiary hearing. Subsequent to the entry of judgment, both Petitioner and the State filed motions to alter and amend. On June 22, 1989, the District Court entered an order denying Petitioner's motion, but did not rule on the State's motion. During the pendency of the State's motion, Petitioner filed a notice of

appeal. On August 10, 1990, the Eleventh Circuit dismissed the appeal of Petitioner for lack of jurisdiction. On remand, the District Court entered an order on September 20, 1990, granting the State's motion to alter and amend in part and denying the motion in part.

Petitioner then filed an appeal challenging the decision of the District Court, while at the same time challenging the court's jurisdiction to consider his own appeal due to the failure to rule on an issue. On December 27, 1991, the Eleventh Circuit dismissed the appeal for lack of jurisdiction because the District Court failed to rule on Petitioner's claim regarding the guilt – phase jury, but the Eleventh Circuit did find that the District Court had jurisdiction to hold an evidentiary hearing on Petitioner's . . . claims [Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972); Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)], and ordered the District Court to hold such a hearing. After an evidentiary hearing on May 18, 1992, the District Court found the Brady/ Giglio claims to be procedurally barred, and thereby dismissed the petition on June 23, 1992. The Eleventh Circuit affirmed the ruling on April 14, 1994, and denied a rehearing en banc on July 12, 1994. The United States Supreme Court again denied certiorari on December 12, 1994, and denied a rehearing on February 21, 1995.

Petitioner began a third round of habeas action in the Superior Court of Butts County on December 22, 1994, challenging his new death sentence on two grounds: ineffective assistance of counsel during the re-sentencing trial and ineffective assistance of counsel during the appeal from the re-sentencing trial. The State filed its answer on January 13, 1995. For reasons unknown to the Court, no action apparently

occurred in Petitioner's case in the state court system until 1999.

On March 29, 1999, an amended habeas petition was filed in the state court. An evidentiary hearing was conducted in the state habeas court on May 5 and 6, 1999, and Petitioner's claims were denied on December 29, 1999. Petitioner's application for a certificate of probable cause to appeal was denied by the Georgia Supreme Court on January 10, 2002. On October 21, 2002, the United States Supreme Court denied certiorari.

5 In February 2003, after exhausting these remedies, Alderman once again returned to the district court for habeas corpus relief. In a new petition, he claimed that he was denied constitutionally effective assistance of counsel at his 1984 re-sentencing trial and in his direct appeal from the death sentence he received. The district court, relying on the record compiled by the Superior Court of Butts County on Alderman's March 29, 1999 habeas petition and the court's order denying relief, denied Alderman's petition and his subsequent motion to alter and amend the judgment. In June 2005, we granted Alderman's application for a certificate of appealability on the ineffective assistance of counsel issue set out in the opening paragraph of this opinion.

II.

6 In subpart A, we outline the case that the State presented against Alderman at his 1984 re-sentencing trial ("RST"). In subpart B, we outline the case Alderman presented.

A.

7 At Alderman's RST, the State sought the death penalty on the grounds that the motive and manner in which Alderman

murdered his wife constituted two aggravating circumstances, each of which independently warranted the death penalty: (1) he murdered his wife to obtain insurance money, and (2) he committed the murder in an "outrageously vile" or "inhuman" way.

8 Addressing the first aggravating circumstance, the prosecutor told the jury that Alderman deserved the death penalty because he murdered Mrs. Alderman " for. . . the purpose of receiving [insurance] money." The prosecutor established this motive by presenting the testimony of City of Savannah employee, Sandra Sullivan. Sullivan, the City's personnel technician who handled employee benefits and records in September 1974, testified that Mrs. Alderman was employed by the City at the time of her death and explained that, as a City employee, Mrs. Alderman participated in the City's group life insurance policy. The prosecutor produced a copy of the City's group policy, which provided for a death benefit commensurate with salary – up to $10,000 – with double indemnity upon accidental death. He also offered a copy of Mrs. Alderman's enrollment card for the City's group policy, which listed Alderman as the sole beneficiary. Sullivan also testified that at the time of Mrs. Alderman's death, her salary qualified her for the maximum $10,000 death benefit, which would double to $20,000 in the event of accidental death.

9 The prosecutor used John Brown to cement his theory that Alderman killed his wife for the insurance benefits. Brown testified that in the days preceding Mrs. Alderman's death, Alderman enlisted him in a plot to kill her. Brown said that Alderman promised him half of the insurance money for his role in the murder.

10 Regarding the second aggravating circumstance, the prosecutor urged the jury to invoke the death penalty because

the "offense of murder . . . was outrageously or wantonly vile, horrible, or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim." Brown provided the State's only evidence on this point. His testimony painted a picture of what the prosecutor termed an "[e]xecution type [sic] killing."

11 Brown recounted the events of the night of Mrs. Alderman's death. Brown said that when he came over to Alderman's apartment that evening, Alderman had him follow Mrs. Alderman around the apartment with a wrench in his hand. Brown struck Mrs. Alderman in the back of her head with the wrench. Alderman then got Mrs. Alderman on the floor and held his hand over her nose and mouth so that she could not breathe. The two men then took Mrs. Alderman to the bathroom tub and filled it with water. Alderman held her head under water. The two men then left her there and headed to the local bar for a few drinks. Upon their return to the apartment two hours later, Brown and Alderman put Mrs. Alderman's body in the trunk of the Aldermans' car and drove the car to a creek that was on the way to Mrs. Alderman's grandmother's house. They then put Mrs. Alderman's body in the driver's seat, rolled down the windows, put the gear in neutral, and sent the car into the creek to make it look like an accident.B.

12 Alderman countered the State's case by showing that Brown had a better motive for killing Mrs. Alderman than he did, and that Brown had confessed to a fellow jail inmate that he had, in fact, committed the murder. Put another way, Alderman's attorneys pursued a lingering or residual doubt theory as to whether Alderman murdered his wife and, in doing so, gave the jury a basis for returning a verdict of life imprisonment instead of the death penalty. Counsel felt that the lingering doubt theory was the appropriate strategy because

a new jury had been empaneled for the RST, the jury that convicted Alderman in 1975 having been discharged. If successful, the lingering doubt strategy would yield a sentence of life imprisonment instead of death.

13 In carrying out this strategy, counsel focused on the inconsistencies in the State's case, asking in their opening statement (after the State rested its case) and again in closing argument that the jury not sentence Alderman to death because there was considerable doubt as to whether he had committed the crime. They supported this strategy with an alternative theory of how the murder occurred: Brown acted alone and killed Mrs. Alderman for drug money.

14 Defense counsel proceeded with Alderman's defense as follows (each category to be discussed in greater detail, infra). First, they planted the seeds of their lingering doubt theory by impeaching Brown's credibility – his story about what motivated Mrs. Alderman's murder and how it occurred. They accomplished this principally through their cross-examination of Brown while he was on the witness stand in the State's case. Then, they put on witnesses who said that Alderman's reputation (in 1974) for being a law-abiding citizen was good – such that it would have been completely out of character for Alderman to have murdered his wife – and that his reputation for truthfulness (in 1974 or at the time of the RST) was beyond reproach. Counsel elicited testimony of Alderman's reputation for telling the truth because he would be their final witness, and the jury would have to believe him if they were to have a lingering doubt as to his guilt.

15 After calling these "reputation" witnesses, counsel presented evidence – mainly through the testimony of Alderman's father – about Alderman's upbringing and the struggles Alderman had to overcome to become a productive member of society. Counsel added to this the testimony of

those monitoring Alderman's prison behavior; they said that Alderman was a model prisoner who posed no threat to the safety of fellow inmates or prison personnel, thus implying that the jury need not sentence him to death to protect those in prison. With all of this testimony before the jury, counsel called Alderman to the stand.

1.

16 Because the State's case hinged principally on Brown's testimony, defense counsel went all out in an effort to destroy Brown's credibility. To that end, counsel portrayed Brown as a lying drug addict. Counsel questioned Brown at great length about his heavy use of alcohol and illegal drugs. Brown conceded that he went through about four fifths of whiskey per week and smoked as much as an ounce of marijuana per day. He also admitted to taking barbiturates by the handful and using speed, LSD, opium, and qualudes.

17 While presenting Alderman's case, counsel read to the jury a transcript of an interview that an agent of the Georgia Bureau of Investigation conducted with Brown wherein Brown admitted that he was intoxicated at the time he helped Alderman kill his wife. Brown also admitted that he experienced sporadic flashbacks on account of his LSD use. During these flashbacks, he would blackout, hallucinate, and generally have no recollection of what he did during the flashback. Brown acknowledged, moreover, that during his trip back to the United States from military service in Vietnam, he removed from his medical records, which had been entrusted to him, references to his frequent blackouts, inability to control himself, and inability to remember his actions during blackouts.

18 In addition to portraying Brown as having extreme difficulty remembering critical events, Alderman's defense

counsel countered Brown's description of how the murder occurred. First, they presented the testimony of a man, Robert S. Walters, who occupied the same cell block that Brown did in December 1974, while Brown was under indictment and awaiting trial for the Alderman murder. Walters testified that Brown gave him three different versions of how Mrs. Alderman died. In the first version, Alderman forced Brown to kill her by threatening him with a knife. In the second version, Alderman threatened Brown with a gun. In the final version, Brown recounted how he alone killed Mrs. Alderman—without reference to any involvement on the part of Alderman. In that account, Brown told Walters that he and Mrs. Alderman had been "having an affair and that he needed money for dope and that him and her [sic] got into an argument and from that argument he picked up a wrench and hit her and then put her in the trunk of the car and drove her out to the creek."

19 The second way in which defense counsel countered Brown's description of the murder was to present the testimony of Dr. Sandra Conradi, a forensic pathologist. In his testimony in the State's case, Brown said that Alderman put his wife on the floor and held his hand over her mouth and nose so she could not breathe. She became unconscious. He then helped Alderman take her to the bathroom where she was placed in the tub and drowned. Dr. Conradi testified that her examination of Mrs. Alderman's autopsy report, the transcript of the 1975 trial testimony of the Director of the Chatham County Branch of the State Crime Lab, and various other documents indicated that there was no strangling, choking, squeezing of the nose, or any other sign of struggle with Mrs. Alderman prior to her death.

2.

20 Several witnesses portrayed Alderman as a man incapable of the act John Brown and the State accused him of

committing and as a person with unimpeachable veracity. The pastor of the Aldermans' church, members of that church, neighbors, and former co-workers testified that Alderman had a reputation in the community for being law-abiding and truthful. They described him as a hard-working man of good character. Alderman's pastor, Rev. Jesse W. Hilton, a Baptist minister who baptized Alderman, also told of the Aldermans involvement in his church; they were active in not just one, but in all of the church's ministries. A Catholic chaplain, Father Richard Paul Wise, who had considerable interaction with Alderman in the prison setting, echoed the pastor's sentiments, adding that Alderman was one of the most honest people he had ever met in prison work.

3.

21 Alderman's father described his son's childhood and upbringing. He and his wife divorced when Alderman was three years old. Following the divorce, he took Alderman and his younger sister to live with their paternal grandmother and step-grandfather.

22 The father told how Alderman lost his left eye and the impact that had on his son's development. At the age of four, Alderman was fishing with his grandmother and step-grandfather when he accidentally stabbed himself in the left eye with a fishing knife. Following surgery and his release from the hospital, a child hit him in the same eye with a hacksaw blade, which left him blind in that eye. Despite this handicap, Alderman's father recounted that when his son was "in the fifth grade, he had already [gone] through the sixth grade books and . . . his teacher and the principal wanted him to skip the sixth grade." A sympathetic blindness, "optical neuritis," began to develop in Alderman's functional eye, however, and Alderman lost so much vision that he could not see or write. As a result, he was sent to the Georgia Academy

for the Blind in Macon. He stayed there through his junior year of high school, excelling academically.

23 While at the academy, Alderman was hospitalized on three occasions for eye surgery. The first surgery was experimental to reduce inflammation. The last surgery was performed to remove the eye so a prosthesis could be implanted. Meanwhile, the sight in his right eye improved enough to enable him to transfer to Savannah High School for his senior year. His performance during that year so impressed his high school counselor that she recommended him to an employer who was looking for a student to train in its business.

24 Alderman's father concluded his direct – examination by saying that he loved his son, that he visited him at the prison "a couple of times," and that he "wanted to go more, but [his] health wouldn't permit it."

4.

25 Operating under the assumption that their lingering doubt strategy might fail, defense counsel sought to avoid the death penalty by convincing the jury that Alderman would pose no threat to the safety of fellow prison inmates and people working at the prison. To this end, they presented the testimony of eleven prison guards. All said that Alderman was a model prisoner. They described him as a committed Christian who frequently assisted them in caring for fellow inmates. Although they did not say so explicitly, they clearly implied that his execution was not necessary for the protection of inmates and those working in the prison facility.

5.

26 Counsel presented Alderman as their final witness. Their direct examination was tailored to the lingering doubt theory they had set before the jury in their opening statement.

Alderman described his relationship with his wife and his whereabouts on the night of her death, a description that stood in sharp contrast to what Brown had told the jury. Alderman testified that he and Mrs. Alderman had a fight that day regarding their inability to conceive a child. Both were considerably upset, so he left their apartment for a while. Upon his return, he found that she was not there. Thinking that she had gone to her grandparents' house, he began driving there. About a half a mile from their house, he saw a car partially submerged in a creek and decided to investigate. Upon closer inspection, he recognized the car as his own. In the car, he found his wife's body. Alderman said that from the time he discovered her body in the creek until he identified her body at the hospital, he had no memory of his actions or any awareness of her death.

27 To bolster this statement, Alderman's counsel read to the jury a transcript of the testimony Dr. Herbert Smith, a psychiatrist, had given at his trial in June of 1975. Dr. Smith had examined Alderman a month or so before his trial to determine the cause of Alderman's lack of memory at such a critical point in time. He opined that Alderman suffered from a "selective amnesia [that was] probably secondary to disassociative reaction," and that upon seeing his wife's body in the creek, he "was emotionally upset, suffering from shock and disbelief, and overwhelmed with grief." Alderman then heard a car approaching and assumed that because he was so close to the grandparents' house, the car probably contained her relatives. He reasoned that "if they saw him there they would jump to the conclusion that he was responsible and they would hurt him physically," as "they had threatened to do . . . in the past."

28 Dr. Smith then explained how "the mechanisms of fight or flight went into operation and [Alderman] fled the scene to

avoid what he considered almost certain physical harm." To keep from "feeling unmanly and cowardly" about leaving his wife there, Alderman experienced a disassociative reaction. The part of his consciousness that knew he had discovered his wife "was split off from the rest of it and . . . repressed into the unconsciousness. This created a disassociative reaction and along with it the amnesia." This, in turn, enabled Alderman to "subconsciously deny that he had found his wife's body and therefore deny that she was actually dead at all, so that he did not have to feel guilty about leaving his wife and he would also be able to escape the terrible fear of physical harm by his in-laws." Dr. Smith said that Alderman's amnesia "lasted from the time he spotted his wife's body in the creek until the time he identified [her] body at the hospital."

29 Responding to the State's theory that he killed his wife to collect insurance proceeds, Alderman testified that he and Mrs. Alderman had a good marriage and that he had no more monetary incentive to kill his wife than any other husband whose wife had life insurance. Contrary to Brown's story, Alderman testified that his wife was not contemplating a divorce. Alderman said that he and Mrs. Alderman had a normal, healthy marital relationship.

30 Alderman's lawyers thus impugned John Brown's credibility, and therefore the State's theory of the case, by portraying Brown as a lying drug-addict, and offering his own, exculpatory version of events.

III.

31 In his habeas petition to the Butts County Superior Court on December 22, 1994, Alderman claimed that his attorneys denied him the effective assistance of counsel by failing to investigate and present to the jury his social - history background. The heart of his claim was that his "counsel's

failure to investigate, develop and present mitigating evidence beyond lingering doubt evidence was not the result of a tactical or strategic decision. Rather it was the result of a complete failure to understand the meaning, purpose and scope of mitigation evidence at a capital sentencing trial."

32 The superior court held an evidentiary hearing on the petition on May 5-6, 1999. Alderman's habeas attorneys examined six witnesses: Father Richard Paul Wise, Catherine Thompson, Martha Murphy Davis, Jack Boyd Deal, George Terry Jackson, and Michael Schiavone. Father Wise was the chaplain at the Georgia Diagnostic and Classification Center from 1980-1986, and came to know Alderman while he was on death row there. Father Wise, who had testified as a defense witness at the RST, complained that he "didn't get a chance to say what [he] wanted to say." He remembered, however, being asked his opinion of Alderman and commenting that "he was probably one of the most honest people [he had] met in prison work." Catherine Thompson, Alderman's ex-wife, stated that while she testified as a defense witness at Alderman's 1975 trial, she was not asked to testify at his RST. Thompson would have testified that Alderman never abused her, and that she had "never seen him get in any kind of arguments, fights. . . that wasn't his nature." Similarly, Martha Murphy Davis, a Presbyterian pastor and director of the Southern Prison Ministry in Georgia, averred that she did not testify at Alderman's RST but would have been willing to do so. Alderman's lawyers at the evidentiary hearing also called Jack Boyd Deal, a retired high school teacher who taught Alderman at Savannah High School in 1968 and 1969. Deal said that he was not contacted to serve as a defense witness at the RST, but if given the chance to testify he would have described Alderman as a model student who "got along well with his peers and his other teachers."

33 The crux of the evidentiary hearing focused on the testimony of Alderman's attorneys, George Terry Jackson and Michael Schiavone. In terms of experience, Jackson had been a practicing attorney for twelve years, and had handled several death penalty cases, some of which went to trial, by the time he was appointed to represent Alderman. In light of his experience in capital cases, Jackson was writing articles and speaking at seminars regarding death penalty litigation. Jackson occupied the first chair, and Schiavone was the second chair at Alderman's RST.

34 At the RST, Jackson was primarily responsible for preparing witnesses on the lingering doubt theory, and Schiavone mainly organized the mitigation evidence. Jackson testified that while lingering doubt was their primary defense to the death penalty, they also wanted "to show what kind of person Jack Alderman was, that he was well respected in the community and trusted." Jackson explained that their character witnesses were questioned at the RST about Alderman's reputation in the community for being a truthful, law abiding citizen, and that there was no tactical reason for not asking them about Alderman's life and background. Jackson also said that he did not have a particular reason for not having Alderman's ex-wife testify or introducing portions of Alderman's medical and educational records.

35 Jackson testified that he hired two investigators to locate a number of witnesses. In particular, he was interested in determining the whereabouts of Jon Sato. Sato and Brown were housed in the same cellblock following Brown's conviction in 1975. Sato gave a taped, sworn statement to his attorney describing how Brown had confessed to committing the murder alone, without Alderman's involvement. Prior to the RST, Sato and the tape disappeared. Jackson described the lengths the defense team went to in an attempt to secure Sato's

testimony. They discovered Sato but only after the jury had returned its verdict against Alderman and he had been sentenced. Jackson also discussed his decision to call Dr. Conradi as a defense witness. While Dr. Conradi was not part of the defense's case at the 1975 trial, Jackson wanted to emphasize the absence of the physical findings that should have been present on Mrs. Alderman's body had Brown been telling the truth.

36 As for mitigating evidence, Jackson and Schiavone called as character witnesses eleven corrections officers, seven of Alderman's friends, and five of Alderman's previous employers or co-workers. Schiavone testified that "[he] wanted background information about Jack and about his family and things of that nature. You know, my recollection is that even though it was a re-sentencing hearing the main thrust of our approach was that – was to prove Jack's innocence, that they shouldn't put an innocent man to death." When asked whether he had a strategical reason for not inquiring into the details of Alderman's "life experiences," Schiavone responded that there was "no tactical or strategic reason I can think of, just probably didn't ask them." Upon further inquiry, Schiavone said: "we probably were thinking that [the reputation evidence] was the extent that we could go into at the time."

37 On December 29, 1999, the Butts County Superior Court denied Alderman's petition for writ of habeas corpus. After discussing Jackson and Schiavone's representation of Alderman, the court found that "trial counsel brought 'to bear such skill and knowledge as will render the trial a reliable adversarial testing process.'" Alderman v. Head, No. 94-V-720 at 20 (Super. Ct. of Butts County Dec. 29, 1999) (citing Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)). The court further found that defense

counsel's "strategy to show 'residual doubt,' was a reasonable, professional decision in light of the information and facts that were available to trial counsel at the time." Id.

As the jury at the re-sentencing trial was not the same jury who found Alderman guilty of the crime, there was a possibility that this jury, who heard the entire guilt/innocence evidentiary presentation, would believe that some doubt existed as to Alderman's guilt. It was reasonable for Mr. Jackson to believe that presenting evidence that Alderman's mother had left the family when he was a child and evidence about his vision problems would not sway a jury to impose a life sentence instead of death. In fact, in order to effectively present a penalty phase defense of mercy based on sad circumstances of his childhood and adolescence, Alderman may have had to admit to committing the crime and then ask the jury to spare him the death penalty due to his difficult childhood. Because Alderman maintained his innocence throughout the first trial and the re-sentencing trial, such a strategy would have been incompatible with his testimony; therefore, the residual doubt strategy used by Mr. Jackson was a reasonable one based on the facts and circumstances as Mr. Jackson knew them to be at that time.

Alderman v. Head, No. 94-V-720 at 23 (Super. Ct. of Butts County December 29, 1999).

38 In response to the claim that his attorneys failed to conduct an adequate pretrial investigation of Alderman's life history, the court found that counsel thoroughly investigated Alderman's background with the aid of two investigators. The court also rejected the claim that counsel failed to understand the scope of available mitigating evidence, and thus failed to present sufficient evidence in mitigation. The court found that Alderman's attorneys presented "substantial" mitigation evidence. Id. at 25. In sum, the court concluded that

"Alderman has failed to establish that he received ineffective assistance of counsel under either prong of the Strickland standard and relief on this claim is denied on the merits." Id. at 30.

IV.

39 Alderman challenges the Butts County Superior Court's findings of fact and conclusions of law on the ground that both are unreasonable under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2254(d). Because the state court adjudicated his habeas corpus claim on the merits, we can grant his application for a writ of habeas corpus only if that court's adjudication:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). Accordingly, for Alderman to secure federal habeas corpus relief, he must demonstrate that his case satisfies the conditions set forth in either § 2254(d)(1) or § 2254(d)(2).

40 Specifically, the Supreme Court provided guidance about how to interpret § 2254(d) in Williams v. Taylor, 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000). Under section 2254(d)(1), the "contrary to" and " unreasonable application" clauses are interpreted as independent statutory modes of analysis. See Williams, 529 U.S. at 405-407, 120 S.Ct. at 1519-1520. Williams held that there are two ways in which a state – court decision may be "contrary to" Federal law:

"First, a state – court decision is contrary to this Court's precedent if the state court arrives at a conclusion opposite to that reached by this Court on a question of law. Second, a state – court decision is also contrary to this Court's precedent if the state court confronts facts that are materially indistinguishable from a relevant Supreme Court precedent and arrives at a result opposite to ours."

529 U.S. at 405, 120 S.Ct. at 1519 (O'Connor, J., for majority). However, Williams does not limit the construction of "contrary to" to the two examples set forth above. Section 2254(d)(1)'s "contrary to" simply implies that "the state court's decision must be substantially different from the relevant precedent of this Court." Id.

41 Alternatively, when the federal court is faced with a "run-of-the-mill state-court decision applying the correct legal rule," the companion "unreasonable application" provision of § 2254(d)(1) is the proper statutory lens. 529 U.S. at 406, 120 S.Ct. at 1520. In other words, if the state court identified the correct legal principle but unreasonably applied it to the facts of a petitioner's case, then the federal court should look to § 2254(d)(1)'s "unreasonable application" clause for guidance. "A federal habeas court making the 'unreasonable application' inquiry should ask whether the state court's application of clearly established federal law was objectively unreasonable." 529 U.S. at 409, 120 S.Ct. at 1521 (emphasis added).

42 In addition to § 2254(d)(1), § 2254(d)(2) regulates federal court review of state court findings of fact; the section limits the availability of relief to "decision[s] that w[ere] based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." § 2254(d)(2). Finally, § 2254(d) provides the framework for granting habeas corpus relief in situations where the federal court has found constitutional error. See, e.g., Wiggins v.

Smith, 539 U.S. 510, 528, 123 S.Ct. 2527, 2539, 156 L.Ed.2d 471 (2003); Taylor v. Maddox, 366 F.3d 992, 999-1001 (9th Cir.2004), cert. denied, 543 U.S. 1038, 125 S.Ct. 809, 160 L.E.2d 605 (2004).

43 Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), establishes the test that governs claims of ineffective assistance of counsel, i.e., the "clearly established Federal law" relevant to this case under 28 U.S.C. § 2254(d). The petitioner must satisfy Strickland's two-part test to mount successfully an ineffective assistance of counsel claim. 466 U.S. at 687, 104 S.Ct. at 2064. In other words, the petitioner must show both 1) deficient performance of counsel and 2) prejudicial impact stemming from counsel's deficient performance. Id. Under the first prong, the petitioner must show "that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. The hallmark of the second prong is reliability: "This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id.

44 When assessing whether counsel fulfilled their obligations under Strickland, the Supreme Court has "focus[ed] on whether the investigation supporting counsel's decision not to introduce mitigating evidence of [petitioner's] background was itself reasonable." See, e.g., Wiggins v. Smith, 539 U.S. 510, 523, 123 S.Ct. 2527, 2536, 156 L.Ed.2d 471 (2003) (concluding that counsel's decision not to expand their investigation beyond three sources fell short of the required professional standards). Furthermore, in evaluating the reasonableness of the investigation, "a court must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable

attorney to investigate further." Wiggins, 539 U.S. at 527, 123 S.Ct. at 2538.

45 This is not to suggest that there is some latent magic number of witnesses to interview or documents or exhibits to review. On the contrary, there is "no absolute duty to investigate particular facts or a certain line of defenses." Fugate v. Head, 261 F.3d 1206, 1217 (11th Cir. 2001) (noting that "a complete failure to investigate may constitute deficient performance of counsel in certain circumstances"). Rather than scrutinizing counsel's performance through the narrow lens of hindsight, the court must consider "the sum total of [counsel's] efforts." Id. at 1240. Furthermore, there is not one "correct" way for counsel to provide effective assistance.

To uphold a lawyer's strategy, we need not attempt to divine the lawyer's mental processes underlying the strategy . . . No lawyer can be expected to have considered all of the ways. If a defense lawyer pursued course A, it is immaterial that some other reasonable courses of defense (that the lawyer did not think of at all) existed and that the lawyer's pursuit of course A was not a deliberate choice between course A, course B, and so on . . . our inquiry is limited to whether this strategy . . . might have been a reasonable one.

Chandler v. United States, 218 F.3d 1305, 1316 n. 16 (11th Cir. 2000).

46 Even if the petitioner claims that his attorney was unaware of a relevant defense, "petitioner must prove that the approach taken by defense counsel would not have been used by professionally competent counsel." Harich v. Dugger, 844 F.2d 1464, 1470 (11th Cir.1988) (abrogated on other grounds). As Strickland emphasized, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant

must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" 466 U.S. at 689, 104 S.Ct. 2052 (citing Michel v. Louisiana, 350 U.S. 91, 101, 76 S.Ct. 158, 164, 100 L.Ed. 83 (1955)).

47 Here, Alderman contends that the state habeas court unreasonably applied Strickland's standard as to the deficient performance prong of his ineffectiveness claims. Alderman maintains that under Strickland, his attorneys' failure to investigate life-history mitigation evidence was reasonable only if counsel made an informed strategic decision to forego such an investigation. In this regard, Alderman questions the state habeas court's determination that counsel's presentation of lingering doubt evidence effectively precluded a finding of deficient performance.

48 Alderman further claims that the state habeas court's decision should be disregarded because the court based its decision on unreasonable determinations of fact in light of the evidence before the court. He contends that the record clearly establishes that his attorneys did not make a strategic or tactical decision to forego presenting life – history mitigation evidence, but instead misunderstood the law regarding mitigation evidence, i.e., they believed that the only evidence the law permitted them to present was testimony concerning his reputation in the community for being law abiding and truthful. Alderman emphasizes Jackson's statement at the evidentiary hearing that the mitigation evidence Alderman's habeas attorneys proffered was not inconsistent with the lingering doubt theory that counsel adopted at the RST.

49 We conclude that the state court's application of Strickland was not objectively unreasonable, and that defense counsel's life – history investigation and presentation of mitigating evidence did not constitute ineffective assistance of

counsel under Strickland. We also conclude that defense counsel's failure to present the evidence habeas counsel proffered at the evidentiary hearing did not constitute an error so "serious as to deprive the defendant of a fair trial, a trial whose result is reliable."

50 Counsel was not required to examine every possible legal strategy or defense available. Strickland focuses on whether the investigation supporting counsel's decision was itself reasonable. Contrary to Alderman's view, the state court determined that counsel conducted a thorough background investigation with the aid of two investigators, presented substantial evidence in mitigation, and had a reasonable trial strategy. As the court stated, "trial counsel's strategy to show 'residual doubt' was a reasonable, professional decision in light of information and facts that were available to trial counsel at the time." Alderman v. Head, No. 94-V-720 at 20 (Super. Ct. of Butts County Dec. 29, 1999).

51 Furthermore, Alderman's claim that counsel needed to make a strategic decision to forego a life – history investigation to satisfy Strickland presupposes that counsel did not in fact make such a decision. At trial, through the testimony of Alderman, his father, and Dr. Smith, counsel elicited an account of Alderman's upbringing: Alderman did not remember his mother at all; the challenges he faced due to his eye injury and subsequent blindness; and the year that he spent away from his family while at the Georgia Academy for the Blind. In addition, defense counsel elicited his father's testimony of love for his son.

52 Notwithstanding counsel's presentation of such mitigating evidence, Alderman contends that the state court's finding that defense counsel presented "substantial" mitigating evidence constitutes an unreasonable determination of fact in light of the evidence before the court. Specifically, he

contends that his attorneys did not, and could not, make a strategic or tactical decision to forego presenting life – history mitigation evidence, because they misunderstood what the law would permit as mitigating evidence. According to Alderman, counsel thought that the only evidence the court would permit to come before the jury in mitigation would be what is traditionally referred to as "character" evidence. That is, the court would allow witnesses to testify about Alderman's good reputation in the community, but not his difficult childhood and the hurdles he faced as a result of his eye injury. Alderman bases his assertion on Schiavone's testimony. When asked whether he had a tactical reason for not presenting the details of Alderman's life history, Schiavone responded that there is "no tactical or strategic reason I can think of, just probably didn't ask them." Alderman v. Turpin, No. 94-V-720, Evidentiary Hr'g at 256 (Super. Ct. of Butts County May 21, 1999). Upon further inquiry, Schiavone speculated that they "were thinking that [the character evidence] was the extent that we could go into at the time." Id. at 257. Alderman seizes upon this statement as proof that Schiavone and Jackson believed that they were limited in their presentation of mitigating evidence.

53 These responses must be viewed, however, in light of both Schiavone's guidance to the character witnesses and the mitigating evidence counsel actually presented to the jury. For example, Schiavone commented on what he told the character witnesses in preparing them to testify: "I mean I assume I wanted background information about Jack and about his family and things of that nature. . . my recollection is that even though it was a re-sentencing hearing the main thrust of our approach was that – was to prove Jack's innocence, that they shouldn't put an innocent man to death." Furthermore, it would be inaccurate to sever Schiavone's statement from the testimony the jury actually heard regarding Alderman's social

– history background. As related above, the jury heard about Alderman's childhood, eye injury, subsequent blindness, year away from the family, and the father's love. Significantly, upon reviewing this testimony, the state court, in making its credibility choices and finding the salient facts, had the authority to discredit Schiavone's statement – that defense counsel believed that the law limited mitigation evidence to "character" evidence – and to find, as it did, that "trial counsel brought 'to bear such skill and knowledge as will render the trial a reliable adversarial testing process.'" Alderman v. Head, No. 94-V-720 at 20 (Super. Ct. of Butts County Dec. 29, 1999).

54 The state habeas court was not unreasonable in deciding that Alderman's lawyers made a strategic decision to forego the presentation of life – history evidence as fully as Alderman's habeas counsel claims the Constitution requires. Under § 2254(d)(2), there is nothing in the record to suggest that the state court engaged in unreasonable determinations of fact. Considering Jackson and Schiavone's testimony as a whole, and the over – arching "lingering – doubt" strategy counsel employed, we cannot say that the state court based its decision on unreasonable determinations of fact in light of the evidence before it.

55 Often inherent in the choice to pursue one strategy is a latent decision not to engage in a different tactic or line of defense. While Schiavone responded that he could not think of a tactical reason for not pursuing more detailed responses from his witnesses about Alderman's life history, that is simply a reflection of the cardinal emphasis on the lingering doubt strategy. Even assuming that his attorneys were not fully aware of the scope of permissible mitigating evidence, Alderman would need to show that the approach they ultimately took "would not have been used by professionally competent counsel." Harich v. Dugger, 844 F.2d 1464, 1470

(11th Cir.1988) (abrogated on other grounds). Given the state court's findings regarding counsel's skill, knowledge, and performance, coupled with the court's finding that "counsel performed both reasonably and effectively in their representation of Alderman," Alderman v. Head, No. 94-V-720 at 30 (Super. Ct. of Butts County Dec. 29, 1999), we cannot say that Alderman was denied his constitutional right to competent representation.

56 Addressing Strickland's second prong, prejudice, the state habeas court concluded that defense counsel's failure to introduce life – history evidence to the extent habeas counsel contend the Constitution requires caused Alderman no prejudice. The district court, reviewing that conclusion, agreed. Assuming, for the sake of argument, that counsel's performance failed to meet Strickland's first prong, we readily conclude on the record before us that "counsel's errors were [not] so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." 466 U.S. at 687, 104 S.Ct. at 2064.

57 The judgment of the district court is accordingly affirmed.

SO ORDERED.

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 04-14595-P

JACK E. ALDERMAN

Petitioner-Appellant,

v.

WILLIAM TERRY, Warden,

Respondent-Appellee.

On Appeal from the United States District Court for the Southern District of Georgia

---

BEFORE: TJOFLAT, ANDERSON and CARNES, Circuit Judges.

BY THE COURT:

Appellant's motion for reconsideration of the November 15, 2004 order denying appellant's application for a certificate of appealability is GRANTED with respect to the following issue:

Whether appellant was denied the effective assistance of counsel at resentencing on the ground that counsel failed

adequately to investigate, and present to the jury, appellant's social-history background.

With the exception of this issue, appellant's certificate of appealability is DENIED.

FILED: June 27, 2005

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 04-14595-P

JACK E. ALDERMAN,

Petitioner-Appellant,

v.

DERRICK-SCHOFILED, Warden,

Respondent-Appellee.

On Appeal from the United States District Court for the Southern District of Georgia

---

ORDER:

Appellant's application for certificate of appealability is **DENIED**.

s/ [illegible signature]

UNITED STATES CIRCUIT JUDGE

Scott L. Poff

Clerk, U.S. District Court

125 Bull Street, Rm 306

Savannah, GA 31401

November 15, 2004

Appeal Number: 04-14595-P

Case Style Jack E. Alderman v. Derrick Schofield

District Court Number 03-00028 CV

TO Scott L. Poff

CC Thomas H. Dunn

CC Susan V. Boleyn

CC Administrative File

APPENDIX E

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF GEORGIA

SAVANNAH DIVISION

JACK E. ALDERMAN

Petitioner,

v.

DERRICK SCHOFIELD, Warden,

Georgia Diagnostic Prison

Case no. CV403-028

ORDER

Before the Court is Petitioner's Application for Certificate of Appealability. (Doc. 46). Pursuant to 28 U.S.C. § 2253(c), an appeal may not be taken in this matter unless the Court issues a Certificate of Appealability. This certificate may issue only if the Petitioner has made a substantial showing of the denial of a constitutional right. The Court finds that Petitioner has not made a substantial showing of the denial of a constitutional right. Accordingly,

IT IS HEREBY ORDERED that Petitioner's motion for Certificate of Appealability is denied.

_____

JOHN F. NAGLE

UNITED STATES DISTRICT COURT

Dated: October 1, 2004

UNITED STATES DISTRICT COURT
Southern District of Georgia

Case Number: 4:03-cv-00028

Date Served: October 4, 2004

Served By: Nancy Y. Sutlive

Attorneys Served:

Thomas H. Dunn, Esq.

Susan V. Boleyn, Esq.

Mitchell Philip Watkins, Esq.

U.S. Court of Appeals

____ Copy placed in Minutes

____ Copy given to Judge

____ Copy given to Magistrate

APPENDIX F

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF GEORGIA

SAVANNAH DIVISION

JACK W. ALDERMAN,

Petitioner,

v.

DERRICK SCHOFIELD, Warden,

Georgia Diagnostic Prison

Respondent

Case No. CV403-028

ORDER

Before the Court is Petitioner's motion to amend the judgment entered on June 19, 2004 (Doc. 41), denying Petitioner's application for writ of habeas corpus. Specifically, Petitioner argues that the Court misconstrued the nature of his claims of ineffective assistance of counsel and that the Court failed to consider evidence in the record which supported those claims. Petitioner's memorandum in support of the instant motion does not present any argument that the Court has not already exhaustively considered in issuing its previous Orders in this proceeding. Accordingly, Petitioner's motion to alter and amend the judgment (Doc. 43) is **DENIED**.

So Ordered,

s/ John F. Nangle

JOHN F. NANGLE

UNITED STATES DISTRICT JUDGE

Dated: August 3, 2004

Case Number: 4:03-cv-00028

Date Served: August 3, 2004

Served By:

Attorneys Served:

Thomas H. Dunn, Esq.

Susan V. Boleyn, Esq.,

Mitchell Philip Watkins, Esq.

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___ Copy given to Judge

____ Copy given to Magistrate

APPENDIX G

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF GEORGIA

SAVANNAH DIVISION

Case No. CV405-028

JACK E. ALDERMAN,

Petitioner-Appellant,

v.

WILLIAM TERRY, Warden,

Respondent-Appellee.

ORDER

Petitioner Jack E. Alderman, asserting two claims for relief, petitions this Court for writ of habeas corpus under 28 U.S.C. § 2254. Thirty years ago, the heinous murder of Petitioner's wife occurred. Approximately twenty-nine years ago, Petitioner was found guilty of this crime by a jury of his peers. Both the original trial and the re-sentencing trial were presided over by one of the most respected trial judges in this part of the country. Petitioner has twice been sentenced to death by a jury.

BACKGROUND

I. Facts

The following statement of facts is taken from Alderman v. Zant, 22 F.3d 1541 (11th Cir. 1994).

The Petitioner, Jack E. Alderman ("Alderman"), and his wife, Barbara Alderman ("Mrs. Alderman"), lived in an apartment in Chatham County, Georgia. Alderman was employed as an assistant manager at the local Piggly Wiggly supermarket. Mrs. Alderman was employed in the Tax Assessor's office for the City of Savannah. In conjunction with her employment, Mrs. Alderman maintained a $10,000.00 life insurance policy that paid double benefits in the event of accidental death. Mrs. Alderman also had another life insurance policy in the amount of $25,000.00 which named her mother as beneficiary.

Alderman met John Arthur Brown ("Brown"), later convicted as an accessory to Mrs. Alderman's murder, when both Alderman and Brown were employed in the vehicle maintenance department for the City of Savannah. Brown testified that on September 19, 1974, Alderman phoned Brown and asked him to meet him at the Piggly Wiggly supermarket. Brown stated that during this meeting Alderman asked Brown to kill Mrs. Alderman in exchange for half the insurance proceeds. Brown, although claiming not to take Alderman seriously, accepted the proposition.

On Saturday, September 21, 1974, Alderman asked Brown to come to his apartment. When Brown arrived, Alderman handed Brown a twelve-inch crescent wrench and instructed Brown to go into the bedroom and kill Mrs. Alderman. Testimony indicates that Brown was initially reluctant, but agreed to strike Mrs. Alderman when persuaded by the gun wielding Alderman. Brown entered the dining room and struck Mrs. Alderman in the head with the wrench. Mrs. Alderman cried out and ran into the living room where she confronted her husband. Alderman tackled Mrs. Alderman, then assisted by Brown, placed his hands over Mrs. Alderman's nose and mouth until she was unconscious.

Alderman and Brown carried Mrs. Alderman's limp body to the bathroom and placed it in the bathtub. Alderman started to fill the tub while Brown cleaned the blood stains from both the living and dining rooms. Alderman and Brown changed clothes and left the apartment for several hours. The two men went to the Piggly Wiggly supermarket where Alderman borrowed $100.00. Alderman and Brown then went to two local Savannah bars. At some time during the evening Alderman gave Brown the $100.00.

Alderman and Brown returned to the apartment around 10:00 p.m., removed Mrs. Alderman's body from the bathtub and wrapped it in a green quilt. The two men carried the body to Alderman's 1974 Pontiac and placed it in the trunk. Brown drove Alderman's car as Alderman followed on his motorcycle. Alongside a creek in Rincon, Georgia, Brown and Alderman removed the body from the trunk and placed it in the driver's seat. At Alderman's direction, Brown reached in the driver's window and released the emergency brake allowing the car to roll into the creek. The car stopped halfway into the creek. Again at Alderman's direction, Brown opened the car door, pulled Mrs. Alderman's body halfway out and allowed her face to fall into the creek. The two men removed the green quilt and the rubber trunk mat from the car and fled the scene on Alderman's motorcycle.

Later that evening, on September 21, 1974, Randy Hodges ("Hodges") and Terry Callahan ("Callahan") were driving home on Baker Hill Road and Highway 131. As they turned onto Highway 131 and approached Dasher's Creek, they noticed a car in the creek. Hodges jumped out, saw that there was a woman in the car and sent Callahan to Lamar Rahn's house to call for help. Effingham County Sheriff Lloyd Fulcher ("Fulcher") responded to the call. Upon his arrival at the scene, Fulcher found the victim's car in the water adjacent

to the bridge. Fulcher noticed no apparent physical damage to the car. He ordered Mrs. Alderman's body to be removed from the car and taken to the hospital. Fulcher observed that there were no skid marks from the car but that motorcycle tracks were apparent in the area. Fulcher also noticed blood stains on the seat of the car and that the trunk mat was missing.

At the direction of Fulcher, Garden City police officer J.D. Crosby ("Crosby") went to Alderman's apartment only to find it locked. Crosby later returned to the apartment at approximately 2:30 a.m. and found Alderman there with a woman. Crosby informed Alderman that his wife had been involved in a traffic accident, and asked him to accompany Effingham County authorities to the hospital. Georgia Bureau of Investigation Agent H.H. Keadle ("Keadle") was present at the Effingham County hospital. Keadle and Fulcher noticed red/brown stains in the seat and crotch of Alderman's pants and on his belt. At that time, Alderman's clothes were taken from him.

Keadle's investigation confirmed Crosby's findings at the accident scene. Keadle also recovered a stained portion of a green rug and Alderman's motorcycle helmet, which had been removed from the Alderman's apartment by Mrs. Alderman's mother. Alderman's father, Jack Alderman, Sr., also gave the police the twelve-inch crescent wrench that he had removed from Alderman's apartment.

Forensic Serologist Elizabeth Quarles, of the Georgia State Crime Laboratory, examined the blood found on Alderman's clothes. The blood type was consistent with Mrs. Alderman's blood. An examination of the vehicle revealed one palm print and four fingerprints which were stipulated as Alderman's. Brown's fingerprints, however, were not found on the car.

Dr. Charles Sullinger ("Dr. Sullinger") performed the autopsy upon Mrs. Alderman's body. Dr. Sullinger concluded that the laceration on the back of Mrs. Alderman's head was inflicted by a blunt instrument. Dr. Sullinger also concluded that because there existed only a small amount of blood in the car, the blow to Mrs. Alderman's head did not occur as a result of the accident. Dr. Sullinger found no evidence of any abnormalities in the heart, no scratches on the forearms and no evidence of strangulation. Dr. Sullinger concluded that the liquid in Mrs. Alderman's lungs revealed that Mrs. Alderman died as a result of asphyxia due to drowning.

Keadle's investigation led him to Brown. Brown eventually gave a statement incriminating himself and Alderman. At trial, Alderman testified on his own behalf and denied that he killed his wife. [footnote omitted]. Alderman testified that on the night of September 21, 1974, he and his wife had an argument and that he left the apartment alone. He allegedly took a bus to Savannah where he spent some time at two local bars. Alderman testified that he returned home at approximately 10:00 p.m. but his wife was not at home. Alderman decided to go to Rincon, Georgia to see if Mrs. Alderman was at her grandparent's home.

Alderman testified that on his way to Rincon, he observed his car on the side of the bridge at Dasher's Creek. Alderman stopped his motorcycle and went to the car where he discovered his wife's body. Alderman stated that he picked up Mrs. Alderman's head and placed it in his lap. Upon hearing a noise, Alderman fled the scene in shock and fear. Alderman allegedly forgot about his wife's body, drove to Savannah and returned to a local bar. Alderman then went to Johnny Ganem's for breakfast with friends. While at breakfast, Alderman offered Gerlina Carmack (the female present in the Alderman's apartment when Officer J.D. Crosby arrived) a ride

home. Alderman had allegedly stopped at his apartment to pick up a jacket when the police arrived and took him to the hospital where he identified his wife's body.

Alderman testified that he did not know why he had left his wife's body in the creek; that he recalled nothing of his trip back to Savannah; and, the fact that his wife was dead had completely left his mind. [Alderman] testified that he first realized the full facts surrounding his wife's death after being treated by a psychiatrist who was able to refresh his memory as to the events surrounding her death. He further testified that after being treated by the psychiatrist he realized that fear had caused him to leave his wife's body in the creek because he knew her family would blame him for her death.

II. Procedural History

On June 14, 1975, Petitioner was convicted in the Superior Court of Chatham County for killing his wife, and then he was sentenced to death. Following his conviction, he appealed to the Georgia Supreme Court, which denied his appeal on June 27, 1978. Certiorari was later denied by the United States Supreme Court on November 27, 1978. He then filed for state habeas relief in the Superior Court of Chatham County, Georgia. In June 1979, his state habeas corpus application was denied, after a hearing that did not restrict counsel in the presentation of evidence or argument. On September 6, 1979, the Georgia Supreme Court denied Petitioner a certificate of probable cause to appeal. The United States Supreme Court denied certiorari on February 19, 1980, and denied a rehearing on March 19, 1980.

Petitioner then filed an application for habeas relief in federal district court on June 27, 1980. This first round of federal habeas appeals culminated in 1983 when the Fifth Circuit, Unit B, acting en banc, granted a new sentencing trial,

which began in March 1984. After his re-sentencing trial, Petitioner was again sentenced to death on April 1, 1984. He then filed a motion for new trial and an amendment thereto, which were denied in an order filed on August 27, 1984. Petitioner directly appealed his death sentence to the Georgia Supreme Court, which affirmed his new death sentence on February 28, 1985. On October 15, 1985, the United States Supreme Court denied certiorari and later denied a rehearing on November 18, 1985.

Petitioner then began a second round of habeas appeals in the state and federal courts with the same attorneys who represented him at the re-sentencing trial. He filed a state habeas petition in the Superior Court of Butts County on February 6, 1986. An amended habeas petition was filed June 16, 1987, and a second amended habeas petition was filed June 25, 1987. Following an evidentiary hearing on June 29, 1987, the state habeas court dismissed the petition on September 10, 1987, holding that all of Petitioner's claims were barred from review because of procedural default. On October 28, 1987, the Georgia Supreme Court denied the application for a certificate of probable cause to appeal. The United States Supreme Court subsequently denied certiorari on March 7, 1988, and denied a rehearing on April 25, 1988.

Petitioner then filed a petition for habeas relief in federal district court on June 23, 1988. The federal petition was denied at the trial level on June 6, 1989, without an evidentiary hearing. Subsequent to the entry of judgment, both Petitioner and the State filed motions to alter and amend. On June 22, 1989, the District Court entered an order denying Petitioner's motion, but did not rule on the State's motion. During the pendency of the State's motion, Petitioner filed a notice of appeal. On August 10, 1990, the Eleventh Circuit dismissed the appeal of Petitioner for lack of jurisdiction. On remand, the

District Court entered an order on September 20, 1990, granting the State's motion to alter and amend in part and denying the motion in part.

Petitioner then filed an appeal challenging the decision of the District Court, while at the same time challenging the court's jurisdiction to consider his own appeal due to the failure to rule on an issue. On December 27, 1991, the Eleventh Circuit dismissed the appeal for lack of jurisdiction because the District Court failed to rule on Petitioner's claim regarding the guilt-phase jury, but the Eleventh Circuit did find that the District Court had jurisdiction to hold an evidentiary hearing on Petitioner's Brady/Giglio claims, and ordered the District Court to hold such a hearing. After an evidentiary hearing on May 18, 1992, the District Court found the Brady/Giglio claims to be procedurally barred, and thereby dismissed the petition on June 23, 1992. The Eleventh Circuit affirmed the ruling on April 14, 1994, and denied a rehearing en banc on July 12, 1994. The United States Supreme Court again denied certiorari on December 12, 1994, and denied a rehearing on February 21, 1995.

Petitioner began a third round of habeas action in the Superior Court of Butts County on December 22, 1994, challenging his new death sentence on two grounds: ineffective assistance of counsel during the re-sentencing trial and ineffective assistance of counsel during the appeal from the re-sentencing trial. The State filed its answer on January 13, 1995. For reasons unknown to the Court, no action apparently occurred in Petitioner's case in the state court system until 1999.

On March 29, 1999, an amended habeas petition was filed in the state court. An evidentiary hearing was conducted in the state habeas court on May 5 and 6, 1999, and Petitioner's claims were denied on December 29, 1999. Petitioner's

application for a certificate of probable cause to appeal was denied by the Georgia Supreme Court on January 10, 2002. On October 21, 2002, the United States Supreme Court denied certiorari, and Petitioner then filed this action in this Court on February 10, 2003.

The foregoing reads like a judicial nightmare. The procedural history of this case is an embarrassment to our judicial system, both state and federal. An exceedingly voluminous record of all papers related to this case has been filed herein. Summarizing, the procedural background is as follows:

1. Mrs. Alderman, the victim in this case, was killed on September 21, 1974.

2. On June 14, 1975, her husband, Petitioner, was convicted for killing her and was then sentenced to death.

3. Following conviction, Petitioner appealed to the Georgia Supreme Court, which appeal was denied on June 27, 1978.

4. In 1978, the United States Supreme Court denied certiorari.

5. Petitioner filed his request for state habeas relief, which application was denied in 1979 after a full hearing by the trial court.

6. Later in 1979, the Georgia Supreme Court denied a certificate of probable cause to appeal.

7. The United States Supreme Court again denied certiorari on February 19, 1980.

8. After his first round of federal habeas appeals, Petitioner was granted a re-sentencing trial by the Fifth Circuit, Unit B, in 1983. On remand, a re-sentencing trial ensued and Petitioner was again sentenced to death on April 1, 1984.

9. In 1985, the Georgia Supreme Court affirmed his death sentence, and the United States Supreme Court again denied certiorari.

10. In 1986, Petitioner began another round of habeas appeals in state court which ultimately were denied, with the Georgia Supreme Court denying his application for a certificate of probable cause to appeal.

11. The United States Supreme Court again denied certiorari in 1988.

12. In 1988, Petitioner began his second federal habeas appeal which ultimately was denied by the District Court in 1992 and affirmed by the Eleventh Circuit in 1994.

13. The United States Supreme Court again denied certiorari on December 12, 1994.

14. In December 1994, Petitioner began a third round of habeas action in the state court. The state field its answer in January 1995, and the record is unclear as to what happened in this matter until March 1999.

15. In March 1999, an amended petition was filed. An evidentiary hearing was conducted in the state court, and the state court denied Petitioner's claims in December 1999.

16. Petitioner's application for a certificate of probable cause to appeal was denied by the Georgia Supreme Court in 2002, and, later in 2002, the United States Supreme Court denied certiorari in this case for the SIXTH time.

17. In February 2003, the petition herein was filed.

FEDERAL HABEAS CLAIMS

I. AEDPA standards

Section 2254, as amended by the Anti-Terrorism and Effective Death Penalty Act ("AEDPA") in 1996, establishes a more deferential standard of review of state habeas judgments. Fugate v. Head, 261 F.3d 1206, 1215 (11th Cir. 2001). The Court considers a state habeas court's factual determinations under "a highly deferential standard of review." Id. The state court's factual determinations are presumed to be correct, and Petitioner can overcome this presumption only by clear and convincing evidence. 28 U.S.C. § 2254(e)(1). Federal habeas relief for a claim adjudicated on the merits in state court is appropriate only where the state court's judgment:

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

A state court's decision is contrary to clearly established Federal law if the state court arrives at a conclusion opposite to that of the U.S. Supreme Court on a question of law or if the state court decides a case differently than the U.S. Supreme Court has on a set of materially indistinguishable facts. Williams v. Taylor, 529 U.S. 362, 412-413, 120 S. Ct. 1495, 1523, 146 L. Ed. 2d 389 (2000). Even if a federal court might have reached a different result relying on the same law, the state court's decision that applies the correct legal rule will

withstand challenge unless it is "'substantially different' from the relevant Supreme Court precedent." Fugate, 261 F.3d at 1216 (quoting Williams, 529 U.S. at 405, 120 S. Ct. at 1519). Under the "unreasonable application" clause, the Court may grant habeas relief "if the state court identifies the correct governing [U.S. Supreme Court] legal principle . . . but unreasonably applies that principle to the facts of the prisoner's case." Williams, 529 U.S. at 413, 120 S. Ct. at 1523.

II. Federal ineffectiveness standards

Claims of ineffective assistance of counsel are governed by Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). To prevail on an ineffective assistance claim, a habeas petitioner must show (1) that "counsel's performance was deficient" because it "fell below an objective standard of reasonableness[.]" and (2) that "the deficient performance prejudiced the defense." Id. at 687-88.

Judicial scrutiny of counsel's performance should be highly deferential, and "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must oversee the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Id. at 689 (quoting Michel v. Louisiana, 350 U.S. 91, 101, 76 S. Ct. 158, 164, 100 L. Ed. 83 (1955)). "This presumption is even stronger when the reviewing court is examining the performance of an experienced trial counsel." Fugate, 261 F.3d at 1216. "In order to show that counsel's performance was unreasonable, the petitioner 'must establish that no competent counsel would have taken the action that his counsel did take.'" Id. at 1217 (quoting Chandler v. United States, 218 F.3d 1305, 1315 (11th Cir. 2000)).

To establish prejudice, a petitioner "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068.

III. Claim One - Ineffective assistance of re-sentencing counsel

A. Substance and background of claim

In Claim One, Petitioner asserts that he was denied constitutionally effective assistance of counsel at the capital re-sentencing trial in violation of the Sixth and Fourteenth Amendments to the United States Constitution. He alleges that his counsel acted unreasonably in failing to investigate his social history and background and in failing to adequately investigate, prepare, and confront the State's witness, John Brown. He further alleges that his counsel's deficient performance was the result of a fundamental misunderstanding of the law, an unreasonable reliance upon prior counsel's investigation and a failure to conduct a reasonable investigation.

Petitioner takes issue with his counsel's decision to present a lingering doubt defense and argues that because of this defense choice, his counsel failed to effectively investigate and present mitigating evidence. Alleging that his counsel misunderstood the law regarding the scope of mitigation evidence and thus, failed to uncover and present readily available mitigation evidence, Petitioner has submitted to the Court several affidavits of family and friends to show mitigation evidence that was available to, but not presented by, his re-sentencing counsel. Petitioner argues that his counsel

ultimately adopted the lingering doubt defense based upon their misunderstanding of the law.

B. Discussion

The state habeas court, after holding an evidentiary hearing, denied habeas relief as to Petitioner's claim of ineffectiveness of resentencing trial counsel. After correctly identifying Strickland as the controlling legal authority concerning ineffective assistance of counsel claims, the state habeas court made lengthy factual findings and analyzed them under the Strickland standard. "When the state habeas court has held an evidentiary hearing, as in this case, the findings of fact by the state court are generally presumed to be correct unless clearly erroneous." Conklin v. Schofield, 366 F.3d 1191, 1199-1200 (11th Cir. 2004). As the factual findings of the state habeas court are fully supported in the record and Petitioner has not shown that they are clearly erroneous, this Court finds that the following state habeas court's factual findings are correct.

At the time of his appointment, [George Tem] Jackson had been a practicing attorney for twelve years and had practiced mostly criminal defense and general practice for nine to ten years. Also at the time of appointment, Mr. Jackson had previously handled twelve to eighteen murder cases with eight or ten going to trial. Four of the murder cases handled by Mr. Jackson were death penalty cases. At the time of his representation of Alderman, Mr. Jackson had handled more than a dozen non-death penalty appeals and had handled five or six death penalty cases that had been remanded to the trial court for resentencing or new trial hearings . . . . [Michael] Schiavone had practiced law for four years, and Alderman's case was the second death penalty case in which he had been involved.

State Habeas Order ("S.H.O."), December 29, 1999 Order, 94-v-720, at 18 (citations to record omitted) .

Mr. Jackson spoke with Alderman many times about his case prior to trial and saw him more than twelve times in person. Alderman furnished Mr. Jackson with the names of potential fact and character witnesses, which trial counsel investigated. In fact, it was the practice of Mr. Schiavone to follow-up as many leads on potential witnesses as he reasonably could. Mr. Jackson also met with Alderman on a number of occasions for the purpose of preparing Alderman for his own testimony.

S.H.O. at 19 (citations to record omitted).

Petitioner's counsel requested and were granted funds to hire two investigators and a forensic pathologist. S.H.O. at 18. Bills from the investigators reveal that they tried to locate and interview many witnesses including John Edward Sato. S.H.O. at 20. Mr. Jackson adopted a trial strategy of establishing residual doubt-that even though Petitioner had already been found guilty, the jury should not return a death sentence because there was still residual doubt as to his culpability and involvement in the crime. S.H.O. at 19. Mr. Jackson sought to establish this by directly attacking the State's case, presenting witnesses to show that Petitioner was not violent, and showing that Petitioner was well respected and trusted in the community, and therefore, would not have committed this type of crime. Id.

To show that Petitioner was incapable of committing the murder,

Mr. Jackson called many witnesses who testified that Alderman was not a violent person and would never have committed the crime of which he was accused.... character

witnesses, Mr. Jackson presented witnesses in addition to who testified that, if any life insurance policies had existed at the time of the murder, they had lapsed prior to Mrs. Alderman's death. In addition to these numerous witnesses, Alderman testified on his own behalf Alderman told that jury about his eye injury and its effects on his life, that he had a normal childhood which revealed that he was an intelligent, likeable child and young adult who was conscientious about his work.

S.H.O. at 21-22 (citations to record omitted).

The state habeas court found that Alderman also testified that on the night of his wife's murder,

[he] returned home and discovered that Mrs. Alderman had not returned, and he rode his motorcycle to Mrs. Alderman's family's home to apologize to her for the argument [earlier that night]. As he was driving, he came upon his car jutting up the embankment, partially submerged in Dasher's Creek. Alderman testified that he panicked and left the area. Alderman vehemently denied having anything to do with the death of his wife.

S.H.O. at 22-23 (citations to record omitted).

The state habeas court additionally found that Mr. Jackson vigorously and thoroughly cross-examined John Brown stating that:

Mr. Jackson was able to show that Brown had an extensive past history with drug abuse, including during his service in the military, had psychotic episodes, that Brown stole his own medical records from the military to keep others from learning about his drug use and schizophrenia, and at times had difficulty distinguishing what was real and what was not real. In addition, Mr. Jackson got Brown to admit that he began using LSD and marijuana again after he returned to Savannah

following his discharge from the service, that he experienced drug-induced blackouts, and that he drank heavily. It was revealed that, at the time of the murder, Brown was living with a girlfriend, was separated from his wife, and was supporting his drug habit rather than supporting his wife and four children.

Mr. Jackson cross-examined Brown about his relationship with the victim. Brown admitted that he thought that the victim was standoffish and thought she was too good for him. Mr. Jackson impeached Brown with his prior inconsistent testimony concerning his drug use around the victim's parents and his prior inconsistent testimony concerning why Alderman wanted Brown to kill the victim. On cross-examination, Brown admitted that he had thought of ways to kill the victim, and that he had the victim drive him to Bloomingdale where he considered killing her during the trip and never warned her that her husband was planning to kill her. Mr. Jackson got Brown to admit that he could have walked out of the apartment without killing Mrs. Alderman after Alderman gave him the wrench, and that he was impaired by drugs and alcohol at the time. Brown also admitted that Alderman threatened to shoot both of them, but he never saw Alderman in possession of a gun. Finally, Mr. Jackson cross-examined Brown on any deals or understandings that he may have had with the district attorney in exchange for his testimony, including his request to be transferred to another prison to be with another prisoner.

S.H.O. at 21 (citations to record omitted).

The state court found that:

In his closing argument, Mr. Jackson argued to the jury that the prosecutor's entire case was based on Brown's testimony. Mr. Jackson attacked the credibility and veracity of Brown, and he poked holes in the theory that Alderman killed Mrs. Alderman to collect insurance money. Most importantly, Mr.

Jackson focused on the lack of evidence and reasonable doubt, and he argued that the jury should not sentence Alderman to death if they were not sure that Alderman had actually committed the crime regardless of the fact that he had already been convicted of it - the residual doubt theory.

S.H.O. at 23 (citations to record omitted).

Petitioner's counsel filed Brady and Giglio motions concerning Brown, but these did not reveal any deals, agreements, or understandings. S.H.O. at 20. Because they never had any information concerning a deal between Brown and the prosecutor, Petitioner's counsel did not raise a Brady/Giglio claim on direct appeal. S.H.O. at 20.

1. Applying AEDPA

After applying the Strickland standard, the state habeas court found that:

Trial counsel's strategy to show "residual doubt," was a reasonable, professional decision in light of information and facts that were available to trial counsel at the time, especially since the prosecutor's case rested primarily on the testimony of John Brown.

. . .

S.H.O. at 20-21.

As the jury at the re-sentencing trial was not the same jury who found Alderman guilty of the crime, there was a possibility that this jury, who heard the entire guilt/innocence evidentiary presentation, would believe that some doubt existed as to Alderman's guilt. It was reasonable for Mr. Jackson to believe that presenting evidence that Alderman's mother had left the family when he was a child and evidence about his

vision prob[illegible] would not sway a jury to impose a life sentence instead of death. In fact, in order to effectively present a penalty phase defense of mercy based on sad circumstances of his childhood and adolescence, Alderman may have had to admit to committing the crime and then ask the jury to spare him the death penalty due to his difficult childhood. Because Alderman maintained his innocence throughout the first trial and the re-sentencing trial, such a strategy would have been incompatible with his testimony; therefore, the residual doubt strategy used by Mr. Jackson was a reasonable one based on the facts and circumstances as Mr. Jackson knew them to be at that time.

S.H.O. at 23.

Alderman alleges that trial counsel failed to conduct an adequate pretrial investigation into Alderman's life and background to uncover and present to the jury evidence in mitigation. As discussed above, trial counsel conducted a thorough background investigation of Alderman with the assistance of two investigators. Furthermore, trial counsel's decision to present a residual doubt theory, instead of pursuing a theory based on a supposed sad and difficult childhood, which Alderman did not testify to at trial, was a reasonable, strategic decision.

. . .

Alderman alleges that trial counsel failed to comprehend the scope of potential mitigating evidence and thereby failed to present ample evidence in mitigation that was available. As discussed extensively above, trial counsel presented substantial evidence in mitigation and had a reasonable strategy for not presenting evidence of Alderman's mother leaving the family and of his vision problems.

S.H.O. at 25.

The state habeas court then concluded that:

the guiding principles set forth by the United States Supreme Court and adopted by the Georgia Supreme Court, i.e., according a strong presumption of effectiveness to trial counsel's conduct, viewing trial counsel's representation under the totality of the circumstances and from the perspective of trial counsel at the time of trial, and presuming the reasonableness of judgment calls and trial strategy, this court concludes that trial counsel performed both reasonably and effectively in their representation of Alderman. Alderman has failed to establish that he received ineffective assistance of trial counsel under either prong of the Strickland standard and relief on this claim is denied on the merits.

S.H.O. at 30.

This Court finds that the state habeas court correctly applied federal standards in finding that re-sentencing trial counsel performed both reasonably and effectively in their representation of Petitioner. Further, this Court finds that the state habeas court's determinations regarding re-sentencing trial counsel's effectiveness were not based on an unreasonable determination of the facts in light of the evidence presented.

2. On the merits

Even if AEDPA did not require the Court to defer to the state habeas court's adjudication in this instance, the Court finds that when reviewed de novo, Petitioner's ineffectiveness claim fails. "Under the totality of the circumstances test [of Strickland, the Court] asks 'whether some reasonable lawyer at the trial could have acted, in the circumstances, as defense counsel acted at trial,' rather than asking what most 'good' lawyers would have done." Conklin, 366 F.3d at 1204 (quoting

Waters v. Thomas, 46 F.3d 1506, 1512 (11th Cir. 1995). "In evaluating counsel's performance, [the Court] 'always avoid[s] second guessing with the benefit of hindsight' and 'allow[s] lawyers broad discretion to represent their clients by pursing their own strategy.'" Fugate, 261 F.3d at 1223 (quoting White v. Singletary, 972 F.2d 1218, 1220, 1221 (11th Cir. 1992).

Re-sentencing counsel's decision to forego some mitigation evidence in favor of presenting a residual doubt defense is a reasonable strategic decision. The Eleventh Circuit has found that a lingering doubt defense at sentencing can be a reasonable one and is perhaps the most effective. Chandler v. United States, 218 F.3d 1305, 1320 (11th Cir. 2000). In Tarver v. Hopper, 169 F.3d 710 (11th Cir. 1999), the Eleventh Circuit noted:

> "Residual doubt" over the defendant's guilt is the most powerful "mitigating" fact.—[The study] suggests that the best thing a capital defendant can do to improve his chances of receiving a life sentence has nothing to do with mitigating evidence strictly speaking. The best thing he can do, all else being equal, is to raise doubt about his guilt.

169 F.3d at 115-16 (quoting Stephen P. Garvey, Aggravation and Mitigation in Capital Cases: What do Jurors Think?, 98 Column L. Rev. 1538, 1563 (1998)).

"[C]ounsel need not present all available mitigating circumstance evidence in order for counsel's conduct to be deemed effective at the sentencing stage. Indeed, 'the Supreme Court and this Court in a number of cases have held counsel's performance to be constitutionally sufficient when no mitigating circumstance evidence at all was introduced, even though such evidence...was available.'" Conklin. 366 F.3d at 1204 (quoting Waters, 46 F.3d at 1511). "Considering the realities of the courtroom, more is not always better. Stacking

defenses can hurt a case. Good advocacy requires 'winnowing out' some arguments, witnesses, evidence, and so on, to stress others." Chandler, 218 F.3d at 1319 (citations omitted). "Which witness, if any, to call, and when to call them, is the epitome of a strategic decision, and it is one that we will seldom, if ever, second guess." Waters, 46 - F.3d at 1512.

A lawyer presenting a lingering doubt defense could reasonably fear that additional character witnesses might be counterproductive, provoking harmful cross-examination and rebuttal witnesses. In reviewing the character affidavits submitted by Petitioner, the Court notes that when compared to trial testimony, they are cumulative and contradictory. A reasonable lawyer could have chosen not to present evidence of Petitioner's emotionally distant father, especially when counsel presented Petitioner's father to tell the jury that he loved his son. Similarly, a reasonable lawyer could have decided not to present evidence of the abandonment of Petitioner by his mother or her criminality, particularly after Petitioner testified that he was too young when she left to remember her at all. These types of inconsistencies may have been more harmful to Petitioner than any good that may have been presented.

After reviewing the re-sentencing trial transcript, the Court finds that Petitioner's counsel was effective in his cross-examination and impeachment of John Brown. The transcript reveals that counsel forcefully and reasonably cross-examined Brown and impeached his credibility in numerous and significant ways. As the state habeas court pointed out, Petitioner's counsel vigorously attacked Brown on his motives for testifying against Petitioner. Petitioner's assertions that his counsel unreasonably failed to sufficiently exploit Brown's mental health records, history of substance abuse, homosexual

relationship with an inmate, and marriage to a potential witness are all contradicted by the trial transcript.

IV. Claim Two — Ineffective assistance of appellate counsel

A. Substance and background of claim

In Claim Two, Petitioner asserts that he was denied constitutionally effective assistance of counsel on his direct appeal from his capital re-sentencing trial in violation of the Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. He alleges that his counsel acted unreasonably in failing to raise on direct appeal a Brady/Giglio claim relating to John Brown. He asserts that the failure to raise that claim on direct appeal prejudiced him because he has been procedurally barred from litigating that issue on the merits.

The state habeas court denied habeas relief as to Petitioner's claim of ineffectiveness of appellate counsel. Applying the Strickland standard, the state habeas court concluded that:

In applying this standard in the context of appellate counsel effectiveness, counsel need not present every argument, regardless of its merit. Rather, one of the most important elements in handling an appeal can be the narrowing of available issues to those which have the most promise of success. Jones v. Barnes, 463 U.S. 745 (1983). "Appellate counsel does not have a duty to raise every nonfrivolous issue available to him." Hammond v. State, 264 Ga. 879, 887, 452 S.E.2d 745 (1995) Rather, it is the attorney's decision as to what issues should be raised on appeal, and that decision, like other strategic decisions of the attorney, is presumptively correct absent a showing to the contrary. Gaither v. Cannida,

258 Ga. 257, 372 S.E.2d 429 (1988)], supra; Jones, 463 U.S. 745, supra.

. . .

Alderman's claim of ineffective assistance of appellate counsel must fail as he has failed to establish that the performance of appellate counsel fell below an objective standard of reasonableness or that he suffered actual prejudice as a result of any unreasonable performance by appellate counsel.

S.H.O. at 31.

B. Discussion

This Court finds that the state habeas court correctly applied federal standards in finding that appellate counsel's performance did not fall below an objective standard of reasonableness or that Petitioner suffered actual prejudice as a result of any unreasonable performance by appellate counsel. Further, this Court finds that the state habeas court's determinations regarding appellate counsel's effectiveness were not based on an unreasonable determination of the facts in light of the evidence presented.

Petitioner has presented no persuasive evidence that his appellate counsel were ineffective in their representation of his case. In 1992, after an evidentiary hearing in the U.S. District Court on the Brady/Giglio issue, both the District Court and the Eleventh Circuit held that despite the procedural bar, they would deny Petitioner's claim on the merits. John Brown has consistently testified, under oath and subject to cross, that there was no deal and that he testified solely because he wanted the truth to be known. At Petitioner's original trial, at Petitioner's re-sentencing trial, at Brown's own murder trial, and in a 1992 deposition, Brown testified that there was no deal. Petitioner's

re-sentencing counsel vigorously investigated whether there was a deal, but they never uncovered any evidence revealing a deal, agreement, or understanding. Not until his 1998 affidavit did Brown indicate that he understood it would be to his benefit to testify against Petitioner. Brown's affidavit was obtained and notarized by Petitioner's current counsel, and Brown's statement was not subjected to adversarial testing. The Court is not inclined to give much weight to Brown's 1998 affidavit in light of his consistent testimony over many years in denying the existence of a deal and in light of the circumstances in which the affidavit was obtained.

This Court finds persuasive the findings of the District Court in its June 23, 1992 order addressing Petitioner's Brady/Giglio claim. See Alderman v. Zant, CV 488-122, Doc. 85 ("Order"). At the 1992 evidentiary hearing, the District Court heard testimony from the prosecutors, Andrew J. Ryan, III and Lionel Drew, from Brown's attorney, Alex Zipperer, and authorized the taking of Brown's deposition. The District Court found that "there was no agreement or understanding, whether formal or implicit, regarding John Brown's testimony." Order, at 41. After hearing the testimony of the prosecutors and Brown's attorney and reviewing Brown's deposition, the District Court assessed their credibility, assigned appropriate weight to their testimony, and found that "Brown's testimony was not shaded or influenced by any deals with the prosecution." Id. at 36. The prosecutors in this case, from the beginning, have denied the existence of any deal or understanding with Brown. The prosecutors subsequently tried and obtained a conviction, and the death penalty was imposed against Brown. This Court finds there is no reliable evidence showing John Brown made a deal with the prosecution to testify in exchange for leniency, or that Petitioner was in any way prejudiced by his counsel's failure to preserve the Brady/Giglio issue on appeal. Thus, Petitioner's counsel were

not ineffective for failing to raise the Brady/Giglio claim on appeal, and Petitioner's writ for habeas relief on this claim is DENIED.

The Court would like to point to U.S. District Court Judge B. Avant Edenfield's prophetic and cautionary words written over fourteen years ago and even more appropriate today. Judge Edenfield noted that:

This case has been around since 1974 and its presence in the federal court has virtually coexisted with my tenure on the bench. The crime and the judicial process have been examined, re-examined, scrutinized, challenged, and resolved. That does not mean, however, that the appellate journey is complete. Finality in the judicial process is a laudatory goal. In capital punishment cases it is almost never attainable. Those who oppose capital punishment are not content to allow the judicial process to work. Their opposition and advocacy in the legislature is understandable. Advocacy in the Court that causes interminable delays and fosters innumerable proceedings erodes the public's confidence in the judicial system. So be it.

Order. at 42.

Pursuant to the above, Petitioner's petition for writ of habeas corpus (Doc. 1) is DENIED.

So Ordered,

s/ JOHN F. NANGLE

UNITED STATES DISTRICT JUDGE

Dated: July 16, 2004

APPENDIX H

SUPREME COURT OF GEORGIA.

No. S00R0971.

ALDERMAN

v.

HEAD.

Jan. 10, 2002.

Reconsideration Denied Feb. 11, 2002.

*761 ORDER OF THE COURT

Upon consideration of the Application for Certificate of Probable Cause to appeal the denial of habeas corpus, it is ordered that it be hereby denied.

All the Justices concur, except CARLEY, THOMPSON and HINES, JJ., who dissent.

CARLEY, Justice, dissenting.

Because Alderman seeks to appeal from the denial of his petition *762 for a writ of habeas corpus, he comply with O.C.G.A. § 9-14-52. Under that statute, the invocation of this Court's jurisdiction requires the timely filing of both a notice of appeal and an application for a certificate of probable cause. Fullwood v. Sivley, 271 Ga. 248, 250, 517 S.E.2d 511 (1999). Petitioner did not satisfy the statutory mandate and, thus, this Court has no jurisdiction to consider the appeal. The majority, however, chooses to ignore its lack of jurisdiction, and disposes of the case on the merits. In my opinion, this appeal

must be dismissed in accordance with the enactments of the General Assembly and the dictates of controlling precedent.

Alderman murdered his wife in 1974. He was sentenced to death, and this Court affirmed. Alderman v. State, 241 Ga. 496, 246 S.E.2d 642 (1978). He subsequently obtained federal habeas relief as to the sentence and, at a new trial, the jury again sentenced him to death. That sentence was affirmed. Alderman v. State, 254 Ga. 206, 327 S.E.2d 168 (1985). Thereafter, Petitioner instituted numerous unsuccessful state and federal habeas actions. This case involves the most recent of his petitions, which was brought in 1994 and the habeas court denied on December 29, 1999. After the denial of habeas relief, he filed a timely application for a certificate of probable cause. However, he did not file a notice of appeal until March 2, 2000. That is approximately two months too late to comply with the 30-day filing requirement established by O.C.G.A. § 9-14-52(b). Thus he did not satisfy those "jurisdictional conditions which must be met by the party seeking to appeal, and which the appellate court must enforce. [Cit.]" Fullwood, supra at 251.

The majority does not cite any authority to support its resolution of the merits of this case. Although the Warden did not file a motion to dismiss, this Court has an independent duty to establish its jurisdiction in any case wherein its existence is in question. Rowland v. State, 264 Ga. 872(1), 452 S.E.2d 756 (1995). At all times, Alderman was represented by counsel, so any exception previously extended to pro se applicants does not apply here. Compare Massaline v. Williams, 274 Ga. 552, 554 S.E.2d 720 (2001); Hicks v. Scott, 273 Ga. 358, 541 S.E.2d 27 (2001). It is immaterial that the failure to file a timely notice of appeal is attributable to the attorney, since Petitioner has no constitutional right to any legal representation in this collateral, civil proceeding. See Gibson v. Turpin, 270

Ga, 855, 513 S.E.2d 186 (1999). See also Williams v. Zant, 274 Ga. 704, 558 S.E.2d 3 (2001) (Carley, J., dissenting). Alderman is sentenced to die, but the General Assembly has not provided that the petitioner in a capital habeas case is excused from compliance with the applicable procedural requirements that all others must meet. "[T]he right of appeal is not absolute, but is one based upon the conditions imposed by the General Assembly for bringing cases to the appellate courts." Fife v. Johnston, 225 Ga. 447, 169 S.E.2d 167 (1969). Death may be different, but, for the difference to have **73 any jurisdictional significance, the General Assembly must so provide.

Until recently, "[t]his Court has always refused to sanction a practice which requires that it ignore jurisdictional statutes and abandon its role as disinterested decision-maker. [Cit.]" Fullwood, supra at 254. However, this appeal is now the latest in a series of decisions in which a majority of this Court has disregarded its jurisdictional limitations and violated its "constitutional obligation to enforce O.C.G.A. § 9-14-52(b) according to its terms." Fullwood, supra at 254. See Williams, supra; Massaline, supra; Hicks, supra. O.C.G.A. § 9-14-52(b) is not a mere procedural technicality. "[I]f the notice of appeal required by O.C.G.A. § 9-14-52(b) is untimely, then the merits of the appeal cannot be reached. [Cits.]" Fullwood, supra at 252. "[T]here is no federal or state constitutional right to bring an appeal. 'Instead, the right of appeal depends upon statute.' [Cit.]" Fullwood, supra at 250. Thus, the concepts of due process and fundamental fairness do not authorize this Court to evade compliance with the applicable law of this State.

Petitioner murdered his wife almost three decades ago. His present appeal had now been pending in this Court almost two years. Because of this inexplicable delay, the Attorney General understandably was forced to file a motion requesting that this

Court comply with its obligation under O.C.G.A. § 9-14-52(b) to "either grant or deny the application within a reasonable time . . . ." In truth, this appeal should and would have been dismissed long ago, had the majority not insisted upon abrogating its constitutional responsibility so as to consider the merits of contentions that it has no jurisdiction to address. "'"To say that jurisdiction may be lodged in the supreme court in any other manner than that provided by the plain words of the statute amounts to judicial legislation." (Cit.)' [Cit.]" Massaline, supra at 560 (Carley, J., dissenting). Because dismissal is the only proper disposition of this case, I dissent to the order resolving the merits.

I am authorized to state that Justice THOMPSON and Justice HINES agree that this case should be dismissed, but do not join this opinion.

APPENDIX I

IN THE SUPERIOR COURT OF BUTTS COUNTY

STATE OF GEORGIA

CIVIL ACTION NO. 94-V-720

Habeas Corpus

JACK E. ALDERMAN,

Petitioner,

v.

FREDRICK J. HEAD,

Warden, Georgia Diagnostic

& Classification Prison,

Respondent.

ORDER

COMES NOW before the court the Petitioner's Amended Petition for Writ of Habeas Corpus as to his conviction and sentence in the Superior Court of Chatham County on indictment number 23,498. Having considered the Petitioner's Amended Petition for Writ of Habeas Corpus (the "Amended Petition"), the Respondent's Amended Answer, relevant portions of the trial record, evidence admitted at the hearing on the merits, and the arguments of counsel, the court makes the following findings of fact and conclusions of law as required by O.C.G.A. § 9-14-49 (1993) and denies the petition for writ of habeas corpus as to the sentence of death.

PROCEDURAL HISTORY

1. On June 14, 1975, Jack E. Alderman was convicted of murder by a jury in the Superior Court of Chatham County, Savannah, Georgia and was sentenced to death. On direct appeal, the Georgia Supreme Court affirmed the verdict and sentence. Alderman v. State, 241 Ga. 496, 246 S.E.2d 642 (1978) ("Alderman I"). The Supreme Court of the United States denied Alderman's petition for writ of certiorari. Alderman v. Georgia, 439 U.S. 991, 99 S.Ct. 593, 58 L.Ed.2d 666 (1978). Alderman filed a petition for writ of habeas corpus in the Superior Court of Chatham County, Georgia. The state habeas corpus court held a hearing without restricting counsel in the presentation of evidence or argument and denied relief. The Supreme Court of Georgia denied Alderman's certificate of probable cause to appeal. Alderman's petition for a writ of certiorari was denied by the Supreme Court of the United States. Alderman v. Balkcom, 444 U.S. 1103, 100 S.Ct. 1068, 62 L.E.2d 788 (1980). Next, Alderman filed an application for federal habeas corpus relief in United States District Court, Southern District of Georgia. Alderman v. Austin, 498 F.Supp. 1134 (S.D. Ga. 1980). The district court ruled on two issues and granted relief as to the conviction and sentence. Id. The Fifth Circuit Court of Appeals reversed the death sentence, but affirmed the conviction on appeal. Alderman v. Austin, 663 F.2d 558 (5th Cir. Unit B 1981); Alderman v. Austin, 695 F.2d 124 (5th Cir. Unit B 1983) (en banc).

2. Without asking the district court to rule on the remaining issues. Alderman proceeded with a new sentencing hearing in the Superior Court of Chatham County. In March 1984, a new sentencing hearing was held, and a jury sentenced Alderman to death. On appeal, the Supreme Court of Georgia affirmed the death sentence. Alderman v. State, 254 Ga. 206, 327 S.E.2d 168 (1985). Alderman's petition for a writ of

certiorari was denied by the Supreme Court of the United States. Alderman v. Georgia, 474 U.S. 911, 106 S.Ct. 282, 88 L.Ed.2d 245 (1985). Next, Alderman filed a petition for writ of habeas corpus in the Superior Court of Butts County. Alderman v. Kemp, Civil Action No. 86-V-524. In September 1987, the state habeas court dismissed the petition. The Supreme Court of Georgia denied the application for certificate of probable cause to appeal in October 1987. Subsequently, the Supreme Court of the United States denied Alderman's petition for a writ of certiorari. Alderman v. Kemp, 485 U.S. 943 (1988). Alderman filed a second federal petition for a writ of habeas corpus in the United States District Court for the Southern District of Georgia in June 1988. The district court denied relief without an evidentiary hearing. Subsequent to the entry of the judgment, both parties filed motions to alter and amend. On June 22, 1989, the district court entered an order denying Alderman's Motion to Alter and Amend, but did not rule on the warden's motion. While waiting for a ruling on the warden's Motion to Alter and Amend, Alderman filed a notice of appeal. On August 10, 1990, the United States Court of Appeals for the Eleventh Circuit dismissed the appeal for lack of jurisdiction based on the warden's pending motion.

3. On remand, the district court entered an order granting the warden's Motion to Alter and Amend in part and denying the motion in part. Next, Alderman filed an appeal which challenged both decision by the district court and challenged the court's jurisdiction to consider his own appeal due to the failure to rule on an issue. On December 27, 1991, the Eleventh Circuit Court dismissed the appeal again for lack of jurisdiction, because the district court failed to rule on a particular claim. In February 1992, the district court ordered the parties to submit briefs and scheduled an evidentiary hearing. Subsequent to the evidentiary hearing, the deposition of John Brown, Alderman's accomplice, was taken and made

part of the record. On June 23, 1992, the district court denied Alderman's petition for habeas corpus relief. On April 14, 1994, the United States Court of Appeals for the Eleventh Circuit affirmed the district court's denial of relief.

4. On December 22, 1994, Alderman filed the instant petition for writ of habeas corpus and amended it on March 31, 1999. The court conducted a hearing on the merits of this action on May 5 and 6, 1999.

CLAIMS FOR RELIEF

5. Alderman asserts in his Amended Petition the following general grounds for issuance of the writ of habeas corpus; denial of his right to effective assistance of counsel on direct appeal from his resentencing trial, denial of his right to effective assistance of appellate counsel; prosecutorial misconduct at trial, including improper and prejudicial arguments, withholding of material exculpatory evidence, exercising peremptory strikes in a racially discriminatory manner, and presenting the false testimony of John A. Brown; trial court errors, including errors in evidentiary rulings, errors in jury instruction, and improper exclusion of jurors. Alderman also asserts that it would be cruel and unusual punishment to execute him after many years of incarceration during appeals; that there was misconduct by the jury at the competency and capital phases of trial; the denial of effective assistance of counsel at the guilt/innocence phase of the capital trial; that imposition of the death penalty by electrocution or by any other method constitutes cruel and unusual punishment; that the sentence of death was imposed arbitrarily and capriciously; and that the United Appeal Procedure is unconstitutional.

FINDINGS OF FACT

6. As found by the U.S. Eleventh Circuit Court of Appeals on appeal from the denial of Alderman's petition for habeas corpus relief by the United States District Court for the Southern District of Georgia, the facts of Alderman's crimes are as follows: Alderman and his wife, Barbara Alderman ("Mrs. Alderman") lived in an apartment in Chatham County, Georgia. Alderman was employed as an assistant manager at the local Piggly Wiggly supermarket. Mrs. Alderman was employed in the Tax Assessor's office for the City of Savannah. In conjunction with her employment, Mrs. Alderman maintained a $10,000.00 life insurance policy that paid double benefits in the event of an accidental death. Mrs. Alderman also had another life insurance policy in the amount of $25,000.00 which named her mother as beneficiary.

7. Alderman met John Arthur Brown ("Brown"), later convicted as an accessory to Mrs. Alderman's murder, when both Alderman and Brown were employed in the vehicle maintenance department for the City of Savannah. Brown testified that on September 19, 1974, Alderman phoned Brown and asked to meet him at the Piggly Wiggly supermarket. Brown stated that during this meeting Alderman asked Brown to kill Mrs. Alderman in exchange for half of the insurance proceeds. Brown, although claiming not to take Alderman seriously, accepted the proposition.

8. On Saturday, September 21, 1974, Alderman asked Brown to come to his apartment. When Brown arrived, Alderman handed Brown a twelve-inch crescent wrench and instructed Brown to go into the bedroom and kill Mrs. Alderman. Testimony indicates that Brown was initially reluctant, but agreed to strike Mrs. Alderman when threatened by persuaded by the gun wielding Alderman. Brown then entered the dining room and struck Mrs. Alderman in the head

with the wrench. Mrs. Alderman cried out and ran into the living room where she confronted her husband. Alderman tackled Mrs. Alderman, then assisted by Brown, placed his hands over Mrs. Alderman's nose and mouth until she was unconscious.

9. Alderman and Brown then carried Mrs. Alderman's limp body to the bathroom and placed it in the bathtub. Alderman started to fill the tub while Brown cleaned the blood stains from both the living and dining rooms. Alderman and Brown then changed clothes and left the apartment for several hours. The two men went to the Piggly Wiggly supermarket where Alderman borrowed $100. Alderman and Brown then went to two local Savannah bars. At some time during the evening, Alderman gave Brown the $100.

10. Alderman and Brown returned to the apartment around 10:00 p.m., removed Mrs. Alderman's body from the bathtub and wrapped it in a green quilt. The two men carried the body to Alderman's 1974 Pontiac and placed it in the trunk. Brown then drove Alderman's car as Alderman followed on his motorcycle. Alongside a creek in Rincon, Georgia, Brown and Alderman removed the body from the trunk and placed it in the driver's seat. At Alderman's direction, Brown then reached in the driver's window and released the emergency break allowing the car to roll into the creek. The car stopped halfway into the creek. Again at Alderman's direction, Brown opened the car door, pulled Mrs. Alderman's body halfway out and allowed her face to fall into the creek. The two men removed the green quilt and the rubber trunk mat from the car and fled the scene on Alderman's motorcycle.

11. Later that evening, on September 21, 1974, Randy Hodges ("Hodges") and Terry Callahan ("Callahan") were driving home on Baker Hill Road and Highway 131. As they turned onto Highway 131 and approached Dasher's Creek, they

noticed a car in the creek. Hodges jumped out, saw that there was a woman in the car and sent Callahan to Lamar Rahn's house to call for help. Effingham County Sheriff Lloyd Fulcher ("Fulcher") responded to the call. Upon his arrival at the scene, Fulcher found the victim's car in the water adjacent to the bridge. Fulcher noticed no apparent physical damage to the car. He ordered Mrs. Alderman's body to be removed from the car and taken to the hospital. Fulcher observed that there were no skid marks from the car but that motorcycle tracks were apparent in the area. Fulcher also noticed blood stains on the seat of the car and that the trunk mat was missing.

12. At the direction of Fulcher, Garden City police officer J.D. Crosby ("Crosby") went to Alderman's apartment only to find it locked. Crosby later returned to the apartment at approximately 2:30 a.m and found Alderman there with a woman. Crosby informed Alderman that his wife had been involved in a traffic accident, and asked him to accompany Effingham County authorities to the hospital. Georgia Bureau of Investigation Agent H.H. Keadle ("Keadle") was present at the Effingham County hospital. Keadle and Fulcher noticed red/brown stains in the seat and crotch of Alderman's pants and on his belt. At that time, Alderman's clothes were taken from him.

13. Keadle's investigation confirmed Crosby's findings at the accident scene. Keadle also recovered a stained portion of a green rug and Alderman's motorcycle helmet, which had been removed from the Alderman's apartment by Mrs. Alderman's mother. Petitioner's father, Jack Alderman, Sr., also gave the police the twelve-inch crescent wrench that he had removed from Alderman's apartment.

14. Forensic Serologist Elizabeth Quarles of the Georgia State Crime Laboratory, examined the blood found on Alderman's clothes. The blood type was consistent with Mrs.

Alderman's blood. An examination of the vehicle revealed one palm print and four fingerprints which were stipulated as Alderman's. Brown's fingerprints, however, were not found on the car.

15. Dr. Charles Sullinger ("Dr. Sullinger") performed the autopsy upon Mr. Alderman's body. Dr. Sullinger concluded that the laceration on the back of Mrs. Alderman's head was inflicted by a blunt instrument. Dr. Sullinger also concluded that because there existed only a small amount of blood in the car, the blow to Mrs. Alderman's head did not occur as a result of the accident. Dr. Sullinger found no evidence of any abnormalities in the heart, no scratches on the forearms and no evidence of strangulation. Dr. Sullinger concluded that the liquid in Mrs. Alderman's lungs revealed that Mrs. Alderman died as a result of asphyxia due to drowning.

16. Keadle's investigation led him to Brown. Brown eventually gave a statement incriminating himself and Alderman. At trial, Alderman testified on his own behalf and denied that he killed his wife. Alderman testified that on the night of September 21, 1974, he and his wife had an argument and that he left the apartment alone. He allegedly took a bus to Savannah where he spent some time at two local bars. Alderman then testified that he returned home at approximately 10:00 p.m. but his wife was not at home. Alderman decided to go to Rincon, Georgia to see if Mrs. Alderman was at her grandparents.

17. Alderman testified that on his way to Rincon, he observed his car on the side of the bridge at Dasher's Creek. Alderman stopped his motorcycle and went to the car where he discovered his wife's body. Alderman stated that he picked up Mrs. Alderman's head and placed it in his lap.

18. Upon hearing a noise, Alderman fled the scene in shock and fear. Alderman allegedly forgot about his wife's body, drove to Savannah and returned to a local bar. Alderman then went to Johnny Ganem's for breakfast with friends. While at breakfast, Alderman offered Gerlina Carmack (the female present in the Alderman's apartment when Officer J.D. Crosby arrived) a ride home. Alderman allegedly stopped at his apartment to pick up a jacket when the police arrived and took him to the hospital where he later identified his wife's body.

19. Alderman testified that he did not know why he had left his wife's body in the creek; that he recalled nothing of his trip back to Savannah; and, the fact that his wife was dead had completely left his mind. Alderman testified that he first realized the full facts surrounding his wife's death after being treated by a psychiatrist who was able to refresh his memory as to the events surrounding her death. He further testified that after being treated by the psychiatrist he realized that fear had caused him to leave his wife's body in the creek because he knew her family would blame him for the death. Alderman v. Zant, 22 F.3d 1541, 1544-1547 (11th Cir. 1994).

CONCLUSIONS OF LAW

I. GROUNDS BARRED BY HAVING BEEN LITIGATED ON DIRECT APPEAL

20. Georgia law is well-settled that, "[a]fter an appellate review the same issues will not be reviewed on habeas corpus." Elrod v. Ault, 231 Ga. 750 (1974) (citation omitted). An issue which has been "actually litigated, i.e., raised and decided, in the appellant's direct appeal" cannot be reasserted in habeas corpus proceedings. Gunter v. Hickman, 256 Ga. 315, 316 (1) (1986) (citation omitted). Accordingly, on habeas corpus review, this court has no authority to revisit any issue already addressed by the Georgia Supreme Court on Alderman's direct

appeal. Roulain v. Martin, 266 Ga. 353, 353-54 (1) (1996). Any claim of error or violation of Alderman's rights decided adversely to him on direct appeal is barred at this stage, and habeas corpus relief is hereby denied to each such claim of error or constitutional violation. For each ground barred by having been previously litigated, the court will set out below the specific claim asserted by Alderman in the Amended Petition and the corresponding portion of the Georgia Supreme Court's decision on the direct appeal.

A. Alleged Trial Court Misconduct

1. Improper Restriction on Petitioner's Voir Dire

21. In Claim V of the Amended Petition, Alderman argues that the trial court improperly restricted voir dire, because trial counsel was not permitted to adequately explore potential jurors' bias concerning imposition of a death sentence. In Alderman II, the Supreme Court addressed the issue of limitations placed upon the defense voir dire as follows: "We find from our examination of the transcript that both parties were given an opportunity to ascertain the ability of prospective jurors to decide the case on its merits, with objectivity and freedom from bias and prior inclination. Waters v. State, 248 Ga. 355 (1981)". The Court went on to hold that, "[T]he trial court did not err by refusing to allow Alderman to ask veniremen what kinds of books and magazines they read; whether they were members of any political organization; what kinds of bumper stickers they had on their automobiles; whether they had read anything about the reliability of hypnosis; whether they had ever expressed an opinion about other criminal cases; whether, if Adolph Hitler were on trial for killing 6,000,000 Jews, they could give him the death penalty; whether a juror who previously had served in a criminal case had been the foreman; and whether any juror had ever been the foreperson of a grand jury. (citation

omitted)." Alderman II, 254 Ga. at 206-207 (3) (citation omitted). Because this issue was raised and decided in Alderman's direct appeal from his re-sentencing trial, the court finds that the claim that the trial court improperly restricted the scope of voir dire deprived him of his constitutional rights is barred as a matter of law and denies the petition for writ of habeas corpus on this ground.

2. Failure to Excuse Jurors for Cause

22. In Claim VI of the Amended Petition, Alderman argues that the trial court failed to excuse jurors for cause who had a fixed opinion on capital punishment that would have substantially affected their ability to follow their oaths which violated his constitutional rights, including his right to a fair trial and a reliable sentencing determination. In Alderman II, the Supreme Court held that, "[T]he answers of these two jurors failed to show that their views on capital punishment would prevent or substantially impair their ability to decide the question of sentence in accordance with instructions of the court." Alderman II, 254 Ga. at 208 (5) (citation omitted). Because this issue was raised and decided in Alderman's direct appeal from his re-sentencing trial, the court finds that this claim is barred as a matter of law and denies the petition for writ of habeas corpus on this ground.

3. Improper Exclusion of Jurors of Cause

23. In Claim VII of the Amended Petition, Alderman argues that the trial court's excusal of Jurors Nedd, Roberts, Stanford, Walthour, Osborne, Davis, Young, and Richman for cause based upon juror attitudes about the death penalty violated his constitutional rights, including his right to a fair trial and a reliable sentencing determination. The Georgia Supreme Court applied the standard for disqualifying a prospective juror for opposition to capital punishment found in

Wainwright v. Witt, 105 S. Ct. 844 (1985) to the facts of the case and held that the trial court did not err by excusing six jurors who were opposed to the death penalty. Alderman II, 254 Ga. at 207-208. Jurors Young and Richman were not excused for cause by the trial court, and trial counsel raised this error of enumeration in Alderman's direct appeal from his re-sentencing trial. Assuming that Alderman intended to included Jurors Young and Richman among the jurors they argued should have been excused for cause in Claim VI of his Amended Petition, this court finds that the trial court's refusal to excuse these two jurors for cause was raised and litigated in Alderman II, 254 Ga. at 208 (5) (citation omitted). Because these issues were raised and decided in Alderman's direct appeal from his re-sentencing trial, the court finds that these claims are barred as a matter of law and denies the petition for writ of habeas corpus on these grounds.

4. Erroneous Jury Instruction

24. In Claim XVI of the Amended Petition, Alderman argues that trail court erred by instructing the jury that their verdict had to be unanimous. This charge was part of the general principles of law given to the jury by the trial court. In reviewing whether the trial court, in its charge of standard principles of law, erred by referring only to the portion of the charge dealing with instructions usual to death penalty cases and the scope of the jury's sentencing discretion as being substantive, the Georgia Supreme Court held as follows: "Reviewing the charge as a whole, the jurors were properly instructed." Alderman II, 254 Ga. at 211 (11) (citation omitted). Because this issue was raised and decided in Alderman's direct appeal from his re-sentencing trial, the court finds that this claim is barred as a matter of law and denies the petition for writ of habeas corpus on this ground.

II. GROUNDS WAIVED BY FAILURE TO RAISE AT TRIAL AND/OR DIRECT APPEAL

25. Any claims of error or deficiency in the trial to which Alderman failed to make a timely objection at trial or which he failed to pursue on appeal are precluded from review by writ of habeas corpus absent a showing of cause and prejudice or an impending miscarriage of justice. Claims of error or violations of Alderman's rights which are raised for the first time in his Amended Petition have been waived and cannot be considered by the court at this stage.

26. Georgia law clearly requires that errors or deficiencies of the trial be objected to at trial and pursued on appeal if possible. The Georgia Supreme Court stated the rule in the seminal case of Black v. Hardin as follows:

a failure to make timely objection to any alleged error or deficiency or to pursue the same on appeal ordinarily will preclude review by writ of habeas corpus. However, an otherwise valid procedural bar will not preclude habeas corpus court from considering alleged constitutional errors or deficiencies if there shall be a showing of adequate cause for failure to object or to pursue on appeal and a showing of actual prejudice to the accused. Even absent such a showing of cause and prejudice, the relief of the writ will remain available to avoid a miscarriage of justice where there has been a substantial denial of constitutional rights.

Black v. Hardin, 225 Ga. 239, 240 (4) (1985). In Valenzuela v. Newsome, the Supreme Court explained that a showing of "miscarriage of justice";

demands a much greater substance [than procedural irregularity or reversible error], approaching perhaps the imprisonment of one who, not only is not guilty of the specific

offense for which he is convicted, but, further, is not even culpable in the circumstances under inquiry. (A plain example is a case of mistaken identity.)

Valenzuela v. Newsome, 253, Ga. 793, 796 (4) (1985). To show cause, Alderman would have to demonstrate that "some objective factor external to the defense impeded counsel's efforts to raise the claim that has been procedurally defaulted." Zant v. Lipham, 1998 Ga. LEXIS 1164 (1998). To show prejudice, he must demonstrate actual prejudice that "worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions." Id. The only exception to the cause and prejudice is the granting of habeas corpus relief to avoid a "miscarriage of justice," which is an extremely high standard. Id.

A. Alleged Prosecutorial Misconduct

27. In Claim IV of the Amended Petition, Alderman alleges that the prosecution knowingly presented the false testimony of John Brown. In Claim VIII of the Amended Petition, Alderman alleges that the prosecution exercised its peremptory strikes in a racially discriminatory manner. In Claim XIII of the Amended Petition, Alderman alleges that the prosecution improperly exercised its peremptory strikes based on gender. In Claim XIX of the Amended Petition, Alderman alleges that the prosecution withheld exculpatory evidence.

28. Because any claims of error or deficiency in the trial to which Alderman failed to make a timely objection at trial or which he failed to pursue on appeal are precluded from review by writ of habeas corpus absent showing of cause and prejudice or an impending miscarriage of justice, claims of error or violations of Alderman's rights which are raised for the first time in his Amended Petition have been waived and cannot be considered by the court at this stage. The court finds that

Alderman has not alleged any facts to show adequate cause why any claim of alleged prosecutorial misconduct at the re-sentencing trial now raised could not have been raised and litigated on direct appeal, such as post-appeal discovery of new facts or changes in the applicable law. Furthermore, the court finds that the circumstances and claims presented do not warrant the granting of habeas corpus relief to avoid any miscarriage of justice.

B. Alleged Trial Court Errors

29 In Claim XI of the Amended Petition, Alderman alleges that the trial court erred by allowing the introduction of victim impact evidence and argument in the re-sentencing trial. In Claim XII of the Amended Petition, Alderman alleges that the trial court erred by allowing the jury to consult written aggravating circumstances, but not allowing the jury to have written instructions on mitigating circumstances with them during deliberations. In Claim XV of the Amended Petition, Alderman alleges that the trial court failed to give adequate instructions on mitigating evidence.

30. Because any claims of error or deficiency in the trail to which Alderman failed to make timely objection at trial or which he failed to pursue on appeal are precluded from review by writ of habeas corpus absent a showing of cause and prejudice or an impending miscarriage of justice, claims of error or violations of Alderman's rights which are raised for the first time in his Amended Petition have been waived and cannot be considered by the court at this stage. The court finds that Alderman has not alleged any facts to show adequate cause why any claim of trial court errors now raised could not have been raised and litigated on direct appeal, such as post-appeal discovery of new facts or changes in the applicable law. Furthermore, the court finds that the circumstances and claims

presented do not warrant the granting of habeas corpus relief to avoid any miscarriage of justice.

III. GROUNDS WAIVED AS SUCCESSIVE TO THE EXTENT THEY WERE AVAILABLE FOR PRESENTATION BUT WERE NOT RAISED IN A PRIOR STATE HABEAS CORPUS PROCEEDING

31. In Claim III of the Amended Petition, Alderman alleges that the state process of letting a non-physician determine and ultimately testify regarding time and cause of death violates his constitutional rights. In Claim IV of the Amended Petition, Alderman alleges that he was unconstitutionally convicted when the prosecutor presented the knowingly false testimony of John Brown. In Claim VIII of the Amended Petition, Alderman alleges that the prosecutor exercised its peremptory strikes in a racially discriminatory manner. In Claim IX of the Amended Petition, Alderman alleges that the means by which the state of Georgia seeks and obtains the death penalty is arbitrary and capricious and violates his constitutional rights. In Claim X of the Amended Petition, Alderman alleges that the method of execution is cruel and unusual punishment. In Claim XI of the Amended Petition, Alderman alleges that he was denied a reliable capital sentencing proceeding by the introduction of victim impact evidence and argument. In Claim XII of the Amended Petition, Alderman alleges that the trial court erred by allowing the jury to consult written aggravating circumstances and not written mitigating circumstances. In Claim XIII of the Amended Petition, Alderman alleges that the prosecutor exercised its peremptory strikes based on gender. In Claim XIV of the Amended Petition, Alderman alleges that the Unified Appeal Procedure is unconstitutional. In Claim XV of the Amended Petition, Alderman alleges that the trial court erred by giving inadequate instructions on mitigating evidence thereby denying Alderman

a reliable sentencing proceeding. In Claim XVII of the Amended Petition, Alderman alleges that he received ineffective assistance of counsel during the guilt/innocence phase of his capital trial in that trial counsel failed to adequately conduct a pretrial investigation into Alderman's life and background to present the jury with evidence relevant to guilt/innocence phase issues; failed to investigate, discover, and present substantial evidence of Alderman's childhood to present the jury with evidence relevant to guilt/innocence phase issues; failed to object to the prosecutor's depiction of facts and argument that was calculated to incite the passions and prejudices of the jury; failed to object to improper and prejudicial comments by the trial court; made arguments during opening statement that were not supported by evidence introduced at trial; elicited harmful testimony on direct examination; failed to object to the prosecutor's discriminatory use of peremptory strikes; failed to challenge the constitutionality of the Unified Appeals Procedure; failed to object to the trial court's instruction on burden of proof; failed to object to the exclusion of jurors based on their religious beliefs; failed to uncover juror misconduct; failed to challenge the constitutionality of Georgia's death penalty scheme; failed to object to improper argument by the prosecutor; failed to object properly to items of improper evidence offered by the prosecutor in aggravation at the penalty phase of trial; failed to object to comments to the jury by the trial court; and to the extent that trial counsel failed to properly preserve objections to any of the constitutional errors referenced in the Amended Petition and failed to effectively raise and litigate these issues on direct appeal. In Claim XVIII of the Amended Petition. Alderman alleges that there was misconduct surrounding the jury and its deliberations which resulted in the denial of his right to a fair trial and reliable sentencing determination. In Claim XIX of the Amended Petition, Alderman alleges that the prosecutor withheld unidentified material exculpatory evidence

in violation of his constitutional rights. In claim XXI of the Amended Petition, Alderman alleges that his trial was fraught with procedural and substantive errors which cannot be harmless when viewed as a whole. In Claim XXII of the Amended Petition, Alderman alleges that he is innocent. In Claim XXIII of the Amended Petition, Alderman alleges that his execution after twenty-five years of incarceration on death row would constitute cruel and unusual punishment.

32. Any claims of error or deficiency in the trial to which Alderman failed to pursue in a prior state of habeas corpus petition are precluded from review by writ of habeas corpus absent a showing that such claims could not reasonably have been raised in a prior habeas corpus petition. Furthermore, the court finds that Alderman has not demonstrated adequate cause as to why any claim of alleged prosecutorial misconduct or trial court error now raised could not have been raised and litigated on direct appeal, such as post-appeal discovery of new facts or changes in the applicable law. Claims of error or violations of Alderman's rights which are raised for the first time in his Amended Petition are considered as successive and cannot be considered by the court at this stage.

IV. GROUND WAIVED TO THE EXTENT IT WAS AVAILABLE FOR PRESENTATION BUT WAS NOT RAISED ON DIRECT APPEAL AND BARRED TO THE EXTENT IT WAS DECIDED ON DIRECT APPEAL

33. The following claim as set out in the Amended Petition is a mixture of issued litigated in the direct appeal and issues not previously raised and decided.

A. Alleged Prosecutorial Misconduct and Alleged Trial Court Error

34. In Claim XX of the Amended Petition, Alderman alleges that the prosecutor's opening statement improperly shifted the burden of proof to Alderman; that the prosecutor improperly commented upon Alderman's failure to testify at trial; that the prosecutor improperly vouched for the credibility of witnesses; that the prosecutor improperly emphasized irrelevant, inflammatory, and prejudicial evidence; that the prosecutor improperly argued evidence of similar transactions; that the prosecutor improperly testified during the opening statement and misstated the evidence; that the prosecutor improperly took advantage of Alderman's lack of funds to properly investigate possible defenses; that the prosecutor improperly impugned the performance of Alderman's counsel; that the prosecutor improperly stated and argued the law applicable to Alderman's case; that the prosecutor improperly suggested that the jury had a duty to return a guilty verdict to prevent further deaths; and that the prosecutor improperly appealed to the jury's passion and prejudice. Additionally, Alderman argues that the trial court's instructions to the jury in response to the prosecutor's alleged misconduct and exacerbated the harm caused by said comments.

35. To the extent Alderman's claim in the Amended Petition exceeds the scope of the decisions on direct appeal, the court finds that such claim is waived and procedurally barred pursuant to Black v. Hardin, 255 Ga. 239 (1985), and the court denies the petition for writ of habeas corpus as to such claim. In the alternative, to the extent Alderman's claim was raised and decided in the direct appeal, the court finds that such claim is barred by having been litigated on direct appeal pursuant to Elrod v. Ault, 231 Ga. 750 (1974) and Gunter v. Hickman, 256 Ga. 315 (1986), and the court denies the petition for writ of habeas corpus on those grounds. Furthermore, the court finds that Alderman has not demonstrated adequate cause as to why any claim of alleged prosecutorial misconduct and trial court

error now raised could not have been raised and litigated on direct appeal, such as post-appeal discovery of new facts or changes in the applicable law.

V. CLAIMS AVAILABLE FOR REVIEW OF THEIR MERITS

A. Ineffective Assistance of Counsel on Direct Appeal from Re-Sentencing trial

36. In Claim I of the Amended Petition, Alderman alleges ineffective assistance of trial counsel at his re-sentencing trial in that his trial counsel misunderstood the meaning, purpose, and scope of mitigation evidence which prohibited counsel from conducting a reasonable investigation for mitigating evidence, and that trial counsel failed to adequately investigate and effectively cross-examine John A. Brown, Alderman's co-defendant, in support of the lingering doubt theory.

1. The Strickland Standard

37. A claim of ineffective assistance of counsel is grounded in the general right to counsel guaranteed to criminal defendants by the Sixth Amendment to the United Stated Constitution and Article I, Section I of the Georgia Constitution.

In Strickland v. Washington, 466 U.S. 668 (1984), the United States Supreme Court adopted a two-pronged approach to reviewing ineffective assistance of counsel claims:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so

serious so as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

Stickland, 466 U.S. at 687. In addition, the Court held:

A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time.

Id. at 689. Expressed differently, a reviewing court "must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id. at 690.

38. In Smith v. Francis, 253 Ga. 782, 325 S.E.2d 362 (1985), the Supreme Court of Georgia adopted the Strickland standard for judging claims of ineffective assistance of counsel. Regarding the first prong, the Smith court explained that the constitutional guarantee is for "reasonably effective assistance" of counsel and that "the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances...from counsel's perspective at the time" and not with the benefit of hindsight. Smith, 253 Ga. At 783(1). To prevail, the defendant must overcome a strong presumption that "counsel's conduct falls within the wide range of reasonable professional conduct and that all significant decisions were made in the exercise of reasonable professional judgment." Id. To prevail on the second prong and show prejudice, the defendant must prove that "but for counsel's unprofessional errors, the result of the proceeding would have been different," in other words, the jury would have concluded

that the balance of aggravating and mitigating circumstances did not warrant death. Id. at 783-784. In Smith, the petitioner argued that his counsel was ineffective because he asserted an unfounded insanity defense, but the habeas court found that the trial counsel's choice of an insanity defense was reasonable under the circumstances and denied relief. In cases where "inadequate representation" is alleged, the Georgia courts have focused the "critical factual inquiry" on whether the defendant had a defense which was not presented, whether trial counsel consulted sufficiently with the accused, and adequately investigated the facts and the law; (and) whether the omissions charged to trial counsel resulted from inadequate preparation rather than from unwise choices of trial tactics and strategy.

Hawes v. State, 240 Ga. 327, 329-330(1) (1977) (citation omitted). In evaluating a claim of ineffective assistance of counsel, the Georgia Supreme Court held that:

Judicial scrutiny of counsel's performance must be highly deferential, indulging a strong presumption that counsel's conduct falls within the wide range of reasonable professional representation...Counsel is also presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.

Zant v. Moon, 264 Ga. 93, 97 (1994) (citations omitted).

39. As the Court recognized in Zant v. Moon, the parameters set forth by the United States Supreme Court for considering ineffective assistance claims are to "address not what is prudent or appropriate, but only what is constitutionally compelled." Zant at 97-98 (1991) (quoting Burger v. Kemp, 483 U.S. 776, 107 S.Ct. 3114, 97 L.Ed.2d 638 (1987).

In Jefferson v. Zant 263 Ga. 316, 318, 431 S.E.2d 110 (1993) (quoting White v. Singletary, 972 F.2d 1218, 1220-1221 (11th Cir. 1992), the Court found that:

The test for reasonable attorney performance "has nothing to do with what the best lawyers would have done. Nor is the test even what most good lawyers would have done. We ask only whether some reasonable lawyer at the trial could have acted, in the circumstances, as defense counsel acted at trial."

In Rogers v. Zant, 13 F.3d 384, 386 (11th Cir. 1994), the Eleventh Circuit reviewed a Georgia death penalty case and, applying the Strickland standard for judging claims of ineffective assistance of counsel, reversed the lower court's grant of habeas relief on ineffective assistance grounds. The Eleventh Circuit noted:

A jury trial is, by its nature, an enterprise that is filled with imponderables from the viewpoint of a trial lawyer. It is an undertaking that calls not only on the lawyer's head, but also on his heart and nerve. At times in the trial arena, audacity or imagination or patience accomplish more than pure logic might suggest is possible. The truth is that it is often hard for even a good lawyer to know what to do. Trying cases is no exact science. And, as a result, we must never delude ourselves that the fair review of a trial lawyer's judgment and performance is an activity that allows for great precision or for a categorical approach. When reviewing whether an attorney is ineffective, courts "should always presume strongly that counsel's performance was reasonable and adequate." Atkins v. Singletary, 965 F.2d 952, 958 (11th Cir. 1992). And, "a court should be highly deferential to those choices...that are arguably dictated by a reasonable trial strategy." Devier v. Zant 3 F.3d 1445, 1450 (11th Cir. 1993).

Even if many reasonable lawyers would not have done as defense counsel did at trial, no relief can be granted on ineffectiveness grounds unless it is shown that no reasonable lawyer, in the circumstances, would have done so. This burden, which is petitioner's to bear, is and is supposed to be a heavy one. And, "[w]e are not interested in grading lawyers' performances; we are interested in whether the adversarial process at trial...worked adequately." See White v. Singletary, 972 F.2d 1218, 1221 (11th Cir. 1992). Therefore, the cases in which habeas petitioners can properly prevail on the ground of ineffective assistance of counsel are few and far between.

40. In Strickland v. Washington, the Court held that, "Strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland v. Washington, 466 U.S. at 660-661. The Eleventh Circuit concluded that, "[e]ven if in retrospect the strategy appears to have been wrong, the decision will be held ineffective only if it was so patently unreasonable that no competent attorney would have chosen it." Adams v. Wainwright, 709 F.3d 1443, 1445 (11th Cir. 1983). Trial tactics, even if they go awry, do not substantiate a claim of ineffective assistance of counsel. Griffin v. Wainwright, 760 F.3d 1505, 1513 (11th Cir. 1985). In Burger v. Kemp, the United States Supreme Court concluded that a lawyer is not required to investigate and present all available mitigating evidence to be considered reasonable. 483 U.S. 776, 107 S. Ct. 3114 (1987).

41. In Tarver v. Hopper, the Eleventh Circuit recently held that:

A lawyer's time and effort in preparing to defend his client in the guilty phase of a capital case continues to count at the sentencing phase. Creating lingering doubt has been recognized as an effective strategy for avoiding the death penalty. We have written about it. See, e.g. Stewart v. Dugger, 877 F.2d 851, 855-56 (11th Cir. 1989). In addition, a comprehensive study on the opinions of jurors in capital cases concluded: "Residual doubt" over the defendant's guilt is the most powerful "mitigating" fact. [The Study] suggests that the best thing a capital defendant can do to improve his chances of receiving a life sentence has nothing to do with mitigating evidence strictly speaking. The best thing he can do, all else being equal, is to raise doubt about his guilt. (Citations omitted). Furthermore, the American Law Institute, in a proposed model penal code, similarly recognized the importance of residual doubt in sentencing by including residual doubt as a mitigating circumstance. So, the efforts of Tarver's lawyer, during trial and sentencing, to create doubt about Tarver's guilt may not only have represented an adequate performance, but evidenced the most effective performance in defense to the death penalty.

Tarver at 715-716.

42. Finally, in Foster v. Dugger, the Eleventh Circuit held that, "The mere fact that other witnesses might have been available or that other testimony might have been elicited from those who testified is not a sufficient ground to prove ineffectiveness of counsel." Foster v. Dugger, 823 F.2d 402, 406 (11th Cir. 1987).

2. Skill and Knowledge

43. Alderman was represented in his re-sentencing trial by George Terry Jackson and Michael Schiavone. (H.T. 97). On May 6, 1983, the trial court appointed Mr. Jackson for the re-

sentencing trial. (H.T. 97). At the time of his appointment, Mr. Jackson had been a practicing attorney for twelve years and had practiced mostly criminal defense and general practice for nine to ten years. (H.T. 175-176). Also at the time of the appointment, Mr. Jackson had previously handled twelve to eighteen murder cases with eight to ten going to trial. Four of the murder cases handled by Mr. Jackson were death penalty cases, but the prosecution withdrew its notice to seek the death penalty in two or three cases after their presentation of evidence. (H.T. 176-177). At the time of his representation of Alderman, Mr. Jackson had handled more than a dozen non-death penalty appeals and had handled five or six death penalty cases that had been remanded to the trial court for resentencing or new trial hearings. (H.T. 177-178). At the request of Mr. Jackson, his associate, Michael Schiavone, was appointed as co-counsel. (H.T. 97). Mr. Schiavone had practiced law for four years, and Alderman's case was the second death penalty case in which he had been involved. (H.T. 251)

3. Performance

44. Trial responsibilities were divided with Mr. Jackson responsible for most of the major guilt/innocence witnesses and Mr. Schiavone responsible for the mitigation witnesses as well as minor guilt/innocence witnesses. (H.T. 98). Mr. Jackson and Mr. Schiavone requested and were granted funds for two investigators by the trial court. (H.T. 184; Resp. Ex. 3, 4, 5, 6, 7, 9, 10). In addition, the trial court granted Mr. Jackson's fund request for a forensic pathologist to assist with their pretrial investigation to determine whether the water found in the victim's lungs came from the bath tub or the creek or whether there was any indication that Brown was telling the truth when he stated that he strangled her into unconsciousness. (H.T. 191). At the time of Alderman's re-sentencing trial,

mitigation specialists were neither used by the defense nor appointed by the trial court in Chatham County. (H.T. 236).

45. Mr. Jackson filed many motions such as a motion for the previous record, for additional funds, for appointment of an expert witness, for individual voir dire, for a copy of the defendant's statement, under Brady, for a list of witnesses, for discovery, for change of venue, for in camera inspection of the state's file, to cause a witness to confer with him, to strike the death penalty as unconstitutional, for a gag order, for copies of psychological tests, for appointment of an expert for a grand jury array issue. (H.T. 230-231; R.T. 18, 21, 29, 34, 36, 38, 41, 59, 61, 64, 68, 77).

46. Mr. Jackson spoke with Alderman many times about his case prior to trial and saw him more than twelve times in person. (H.T. 222). Alderman furnished Mr. Jackson with the names of potential fact and character witnesses, which trial counsel investigated. (H.T. 223; Resp. Ex. 26-33, 69). In fact, it was the practice of Mr. Schiavone to follow-up as many leads on potential witnesses as he reasonably could. (H.T. 266). Mr. Jackson also met with Alderman on a number of occasions for the purpose of preparing Alderman for his own testimony. (H.T. 237-238).

47. At some point, Mr. Jackson inquired of the District Attorney as to whether there was a possibility of resolving Alderman's case short of trial. (H.T. 100). Mr. Jackson was told that there was not such a possibility. (H.T. 100).

48. Mr. Jackson's adopted trial strategy was one of establishing residual doubt – that even though Alderman had already been found guilty, he argued the jury should not return a death sentence because there was still some residual doubt as to Alderman's culpability and involvement in the crime. (H.T. 100, 224). In furtherance of this trial strategy, in addition to

directly attacking the state's case, Mr. Jackson presented witnesses to show that Alderman was not violent, and that he was well respected and trusted in the community and therefore, would not have committed this type of crime. (H.T. 149, 224-225). To that end, many people were contacted and considered as potential witnesses. Mr. Jackson also contacted many prison guards who could testify about Alderman's non-violent attitude while incarcerated.

49. In preparation of trial, Mr. Jackson reviewed Alderman's previous trial transcript, clerk's record, former appellate counsels' records and spoke with Alderman's prior lawyers. (H.T. 149, 183, 192; Resp. Ex. 42, 48, 50). Mr. Jackson also obtained investigative reports, crime lab reports, witness statements, and witness lists in connection with the crime. (H.T. 114-115, 192-193; Pet. Ex. 69, 70; Resp. Ex. 65, 67, 71).

50. Bills from Alderman's investigators reveal that the investigators tried to locate and interview many witnesses including Sally Weiss, Robert Stanley Waters, Shirley Pedersen, Hugh Partain, prison guards, Dr. Herbert Smith, and John Edward Sato. (Resp. Ex. 3-11, 41, 43). In Mr. Jackson's opinion, the prosecutor's case revolved around the testimony of John Brown, Alderman's co-defendant. (H.T. 101). Mr. Jackson filed Brady and Giglio motions concerning Brown, which did not reveal any deals or agreements. (H.T. 102, 104-105; R.T. 38). Brown's attorney had refused to allow Mr. Jackson to interview Brown on any subject, including any alleged deals. (H.T. 102). As a result of never having information concerning a deal between Brown and the prosecutor, Mr. Jackson did not raise a Brady/Giglio claim on direct appeal. (H.T. 109-110).

51. Because of the importance of Brown as a witness against Alderman, Mr. Jackson vigorously and thoroughly cross-examined Brown. (H.T. 104; R.T. 785-835).

52. Following the jury's imposition of the death sentence, Mr. Jackson continued to represent Alderman by filing an appeal on his behalf. (H.T. 238). Mr. Jackson had assistance from Clay Culp and Mr. Schiavone, both associates with his firm. (H.T. 238). He also solicited and received assistance from other lawyers, including Bruce Morris, Patsy Morris at the A.C.L.U., Steven Sadow, and Millard Farmer of Team Defense Project, Inc. (H.T. 238-241; Resp. Ex. 13-17, 38).

53. The court finds that trial counsel brought "to bear such skill and knowledge as will render the trial a reliable adversarial testing process." Strickland v. Washington, 466 U.S. 668, 688 (1984).

4. Additional Ineffective Assistance of Counsel on Direct Appeal from Re-Sentencing Trial Issues

54. In Claim I of the Amended Petition, Alderman alleges that he was deprived of his right to effective assistance of counsel at the re-sentencing trial in violation of his constitutional rights.

55. In part (a) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to conduct an adequate pretrial investigation into the prosecutor's case and defenses available to trial counsel. Trial counsel's strategy to show "residual doubt," was a reasonable, professional decision in light of information and facts that were available to trial counsel at the time, especially since the prosecutor's case rested primarily on the testimony of John Brown, Alderman's co-defendant. During Mr. Jackson's extensive cross-examination of Brown, Mr. Jackson was able to show that

Brown had an extensive past history with drug abuse, including during his service in the military, had psychotic episodes, that Brown stole his own medical records from the military to keep others from learning about his drug use and schizophrenia, and at times had difficulty distinguishing what was real and what was not real. (R.T. 779-804, 848). In addition, Mr. Jackson got Brown to admit that he began using LSD and marijuana again after he returned to Savannah following his discharge from the service, that he experienced drug-induced blackouts, and that he drank heavily. (R.T. 808-820). It was revealed that, at the time of the murder, Brown was living with a girlfriend, was separated from his wife, and was supporting his drug habit rather than supporting his wife and four children. (R.T. 832, 835).

56. Mr. Jackson cross-examined Brown about his relationship with the victim. Brown admitted that he thought that the victim was standoffish and thought she was too good for him. (R.T. 820). Mr. Jackson impeached Brown with his prior inconsistent testimony concerning his drug use around the victim's parents and his prior inconsistent testimony concerning why Alderman wanted Brown to kill the victim. (R.T. 823-824, 839-840). On cross-examination, Brown admitted that he had thought of ways to kill the victim, and that he had the victim drive him to Bloomingdale where he considered killing her during the trip and never warned her that her husband was planning to kill her. (R.T. 850-855). Mr. Jackson got Brown to admit that he could have walked out of the apartment without killing Mrs. Alderman after Alderman gave him the wrench, and that he was impaired by drugs and alcohol at the time. (R.T. 873-874). Brown also admitted that Alderman threatened to shoot both of them, but he never saw Alderman in possession of a gun. (R.T. 877). Finally, Mr. Jackson cross-examined Brown on any deals or understandings that he may have had with the district attorney in exchange for

his testimony, including his request to be transferred to another prison to be with another prisoner. (R.T. 933-935).

57. To show that Alderman was incapable of committing the murder, Mr. Jackson called many witnesses who testified that Alderman was not a violent person and would never have committed the crime of which he was accused. A childhood friend testified that Alderman was honest and reliable. (R.T. 1061). Mr. Jackson called eleven correctional officers who testified that Alderman was a good inmate who never gave them any problems. (R.T. 1068, 1070, 1074, 1076, 1078-1079, 1081-104, 1086). A former supervisor of Alderman's, Valle Freeman, testified that Alderman was dependable and that Brown was unreliable and not trustworthy. (R.T. 1071). Alderman's co-workers also testified that he was a hard worker, a good person, honest, and dependable. (R.T. 880, 1088, 190). Former neighbors and family friends testified as to Alderman's good reputation in the community. Father Richard Wise, a pastor for prisoners on death row, testified that Alderman was honest and could be believed under oath. (R.T. 887-888). Alderman's father testified that Alderman was not a violent child and was very smart. (R.T. 1132). In addition to character witnesses, Mr. Jackson presented witnesses who testified that, if any life insurance policies had existed at the time of the murder, they had lapsed prior to Mrs. Alderman's death. (R.T. 1057, 1155). In addition to these numerous witnesses, Alderman testified on his own behalf. Alderman told the jury about his eye injury and its effects on his life, that he had a normal childhood which revealed that he was an intelligent, likeable child and young adult who was conscientious about his work. Alderman testified that his marriage to the victim was a good, typical marriage; Alderman also told the jury that their income was steadily increasing throughout the marriage and they had purchased a home together. (R.T. 1183-1195).

58. Alderman described how he came to know Brown and his wife's feelings about Brown. He testified that he met Brown at his job with the City of Savannah. (R.T. 1197-1198). Alderman described Brown's relationship with his wife as "chilled" and related an encounter that he and Mrs. Alderman had with Brown in which Brown told him that he felt that Mrs. Alderman thought she was too good for him and Alderman defended his wife. (R.T. 1200, 1203). Even after he switched jobs, Alderman stated that Brown still came around to see him at his job to visit and borrow money, and that Mrs. Alderman was always polite, but reserved around Brown. (R.T. 1209-1210). Alderman denied telling Brown that he wanted to kill Mrs. Alderman. (R.T. 1215, 1233).

59. Finally, Alderman testified as to the events leading up to the death of Mrs. Alderman. Alderman related that, on the day of the murder, Brown came to his home in desperate need of some money. (R.T. 1232). Brown also told him that he was having car trouble and Alderman loaned him a wrench and some other tools so that he could work on his car. (R.T. 1235). After going to the Piggly Wiggly to borrow $100, Alderman returned to his apartment and got into an argument with Mrs. Alderman, and she left. (R.T. 1273). Shortly thereafter, Alderman took a bus to downtown Savannah and went to a few bars. (R.T. 1278-1281). Alderman returned home and discovered that Mrs. Alderman had not returned, and he rode his motorcycle to Mrs. Alderman's family's home to apologize to her for the argument. (R.T. 1286). As he was driving, he came upon his car jutting up the embankment, partially submerged in Dasher's Creek. (R.T. 1290). Alderman testified that he panicked and left the area. (R.T. 1290-1296). Alderman vehemently denied having anything to do with the death of his wife. (R.T. 1309).

60. In his closing argument, Mr. Jackson argued to the jury that the prosecutor's entire case was based on Brown's testimony. Mr. Jackson attacked the credibility and veracity of Brown, and he poked holes in the theory that Alderman killed Mrs. Alderman to collect insurance money. Most importantly, Mr. Jackson focused on the lack of evidence and reasonable doubt, and he argued that the jury should not sentence Alderman to death if they were not sure that Alderman had actually committed the crime regardless of the fact that he had already been convicted of it – the residual doubt theory. (R.T. 1411).

61. As the jury at the re-sentencing trial was not the same jury who found Alderman guilty of the crime, there was a possibility that this jury, who heard the entire guilt/innocence evidentiary presentation, would believe that some doubt existed as to Alderman's guilt. It was reasonable for Mr. Jackson to believe that presenting evidence that Alderman's mother had left the family when he was a child and evidence about his vision problems would not sway a jury to impose a life sentence instead of death. In fact, in order to effectively present a penalty phase defense of mercy based on the sad circumstances of his childhood and adolescence, Alderman may have had to admit to committing the crime and then ask the jury to spare him the death penalty due to his difficult childhood. Because Alderman maintained his innocence throughout the first trial and the re-sentencing trial, such a strategy would have been incompatible with his testimony; therefore, the residual doubt strategy used by Mr. Jackson was a reasonable one based on the facts and circumstances as Mr. Jackson knew them to be at that time.

62. In part (b) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to file several pretrial motions to protect Alderman's right to a fair trial. Trial

counsel filed numerous pretrial motions including a motion to obtain the trial record, motion for funds for an investigator and a forensic pathologist, motion for additional funds for investigator, motion for individual voir dire, motion for a copy of Alderman's statement, Brady motion, a motion for the list of witnesses and other general discovery motions, motion for change of venue, motion for an incamera inspection of the prosecutor's file, motion to cause witnesses to confer with Alderman, motion to strike the death penalty as unconstitutional, motion to impose a gag order, motion for copies of psychological tests or medical treatment of Alderman while at Jackson State Prison, motion for an appointment of an expert for a grand jury array issue. Furthermore, Alderman fails to support his claim and does not state what other motions, if any, that trial counsel should have filed to constitute effective assistance of counsel.

63. In part (c) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to conduct an adequate examination of potential jurors to ensure that Alderman received a fair and impartial jury. Alderman also argues that trial counsel failed to object to the sitting of several venirepersons who could not impartially determine the appropriate punishment in this case. Alderman does not support this argument and fails to state which portion of trial counsel's argument was inadequate or which potential jurors should have been struck.

64. In part (d) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to adequately confront the state's case at the re-sentencing trial. Trial counsel's strategy was reasonable, and Alderman fails to state how trial counsel could have more effectively confronted the state's case.

65. In part (e) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to object to the admission of several items of evidence offered by the state at the re-sentencing trial which would have ensured that certain improper evidence would not have been considered by the jury. Trial counsel objected to several pieces of evidence, including State's Exhibits 1-5, 7-8, 38-40, 45-47. Alderman fails to state which pieces of evidence should have been objected to and on what grounds.

66. In part (f) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to give a closing argument at the conclusion of the re-sentencing trial which adequately exposed the shortcomings of the state's case against Alderman. Mr. Jackson gave a sound, reasonable closing argument based on the evidence as presented, and he vehemently attacked the prosecutor's case, especially the testimony of the prosecutor's main witness, Brown. Alderman fails to state what additional argument should have been made and fails to establish that Mr. Jackson gave a defective and unreasonable closing argument.

67. In part (g) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to properly object to certain improper evidence presented by the prosecutor in aggravation. Alderman fails to state what pieces of improper evidence should have been objected to. Also, the Georgia Supreme Court affirmed Alderman's sentence on this ground. Alderman v. State, 254 Ga. at 210.

68. In part (h) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to conduct an adequate pretrial investigation into Alderman's life and background to uncover and present to the jury evidence in mitigation. As discussed above, trial counsel conducted a thorough background investigation of Alderman with the

assistance of two investigators. Furthermore, trial counsel's decision to present a residual doubt theory, instead of pursuing a theory based on a supposed sad and difficult childhood, which Alderman did not testify to at trial, was a reasonable, strategic decision.

69. In part (i) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to object properly to misleading and improper arguments made by the prosecutor during its penalty phase summation to the jury. Alderman fails to state which arguments that trial counsel should have objected to. In addition, trial counsel raised this issue on direct appeal, and the Georgia Supreme Court affirmed the death sentence on this ground. Alderman v. State, 254 Ga. at 211.

70. In part (j) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to object to those portions of the trial court's charge which failed to adequately define mitigating circumstances and misled the jury in other ways. Alderman fails to state which charges should have been objected to and in what ways the jury could have been misled by the unnamed charges.

71. In part (k) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to comprehend the scope of potential mitigating evidence and thereby failed to present ample evidence in mitigation that was available. As discussed extensively above, trial counsel presented substantial evidence in mitigation and had a reasonable strategy for not presenting evidence of Alderman's mother leaving the family and of his vision problems.

72. In part (l) of Claim I of the Amended Petition, Alderman alleges that trial counsel elicited damaging testimony on cross-examination that the state failed to bring

out on direct examination. Alderman fails to support this allegation with any evidence of such testimony.

73. In parts (m) and (n) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to employ an independent forensic serologist and failed to make an adequate showing of need for the trial court to appoint an independent forensic serologist. Alderman fails to show what evidence an independent forensic serologist could have revealed that would have benefitted Alderman's case.

74. In part (o) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to challenge the process whereby a non-medical person was allowed to testify to critical matters of cause and time of death. Alderman fails to establish that any of the medical examiner's testimony was improper or incorrect. Dr. Sullinger, a pathologist with the Georgia Crime Lab was qualified to give his opinion as to the cause of death. (R.T. 674-676). Furthermore, medical examiners need not be a licensed physician, but may be a pathologist. O.C.G.A. § 45-16-22.

75. In part (p) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to uncover the deal between the state and John Brown. Alderman has failed to present evidence that any type of deal existed between the state and John Brown. Trial counsel thoroughly investigated the possibility that a deal existed, but trial counsel and their investigators were unable to uncover any evidence.

76. In part (q) of Claim I of the Amended Petition, Alderman alleges that trial counsel unreasonably brought before the jury the issue of appellate review and thereby lessened the jury's sense of responsibility in imposing a death sentence, Caldwell v. Mississippi, 472 U.S. 320 (1985).

Alderman has presented no evidence that trial counsel brought the issue of appellate review to the jury's attention.

77. In part (r) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to provide the defense's expert medical examiner with necessary and relevant information. Alderman fails to state what necessary and relevant information should have been given to the expert to support this claim.

78. In part (s) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to adequately prepare the defense's expert medical examiner who testified at the re-sentencing trial. Alderman fails to state what additional preparation could have been done which would have changed the outcome of the trial to support this claim.

79. In part (t) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to ensure that the trial court adequately instructed the jury not to discuss the case among themselves or others. During the trial, the trial court instructed the jury four times not to discuss the case among themselves or with others. (R.T. 5, 483, 991, 1245). Alderman fails to state additional instructions that trial counsel should have requested or any additional actions that trial counsel should have taken.

80. In part (u) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to object to the trial court's charge in response to a jury note. (R.T. 1100). The trail court responded to the note by stating that it could not respond to the jury's question. Alderman fails to show what objection trial counsel should have made and how the failure to the trial court's response prejudiced him.

81. In part (v) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to prepare a defense witness, Robert Waters. Alderman fails to state what additional preparation should have been done and how the alleged failure of such additional preparation has prejudiced him.

82. In part (w) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to ask Alderman's father, who testified at the re-sentencing trial, if he wanted the jury to spare his son's life thereby creating the inference that Alderman's father did not really care about his son. Alderman's father testified that he loved his son and visited him while he was in prison. (R.T. 1135). Alderman fails to show how the failure to specifically articulate this question prejudiced him.

83. In part (x) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to elicit crucial information from a state witness and then had to read the relevant portions of police reports to the jury and thereby diminished the impact of said testimony. (R.T. 1162). Alderman fails to state how such a reading of the relevant portion of the police reports prejudiced him or how it diminished the impact of the testimony.

84. In part (y) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to elicit crucial testimony from Alderman at the re-sentencing trial. Alderman fails to state what additional information should have been elicited or how such information would have been helpful to the defense.

85. In part (z) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to request a voir dire of the jury after they entered the courtroom during his

argument on striking the (b)(4) statutory aggravating circumstance and argues that a reasonable juror would interpret trial counsel's argument and the trial court's instruction as a judicial comment that the (b)(4) aggravating circumstance was proven beyond a reasonable doubt which relieved the state of proving an essential element of its case. A review of the record shows that the jury was escorted out of the courtroom to the jury room and possibly heard only the introduction to trial counsel's argument. (R.T. 1361). Furthermore, as the jury did not find the (b)(4) aggravating circumstance, Alderman fails to show how this event prejudiced him.

86. In part (aa) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to prepare to defend against the (b)(7) statutory aggravating circumstance even though he had been given notice prior to trial that the prosecution intended to pursue such an aggravating circumstance. Alderman fails to state how counsel's performance was deficient with respect to the (b)(7) aggravating circumstance.

87. In parts (bb) and (cc) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to object to the prosecutor's argument whereby he vouched for the credibility of Brown (R.T. 1379; 1392; 1394), and that trial counsel failed to object to the prosecutor's argument wherein he stated his opinion that Brown was credible (R.T. 1379). These claims were raised on appeal and the Georgia Supreme Court affirmed Alderman's death sentence on this ground. Alderman v. State, 254 Ga. at 211.

88. In part (dd) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to object to the prosecutor's argument wherein he stated his opinion that this case in particular deserved the death penalty (R.T. 1392). Upon review of the record, the transcript reveals that the

prosecutor did not give his opinion as to whether this case deserved the death penalty more so than other murder cases. Rather, the prosecutor was arguing as to whether Brown had a reason to lie on the stand. (R.T. 1392).

89. In part (ee) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to object to the prosecutor's argument that shifted the burden of proof to the defendant. (R.T. 1399). Upon review of the record, the transcript reveals that the prosecutor was arguing that Alderman was in the best position to explain how blood got on his pants and that his explanation was that he did not know. The prosecutor did not got any farther with this argument, and such argument did not shift the burden of proof.

90. In part (ff) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to object to the trial court's charge that diminished the prosecutor's burden of proof on reasonable doubt. (R.T. 1435). The trial court's charge to the jury concerning moral and reasonable certainty was a proper charge. (R.T. 1435); Vance v. State, 262 Ga. 236, 237, 416 S.E.2d 516 (1992).

91. In part (gg) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to object to the trial court's charge wherein it instructed the jury that its responsibility was to find Alderman guilty. (R.T. 1440). The trial court charged the jury, "Although the defendant has been found guilty and there's nothing that you can do to change that, that's not your responsibility. You can consider his guilt or innocence as you view it in determining your responsibilities in this particular case." (R.T. 1440). Trial counsel was not ineffective for not objecting to this particular charge.

92. In part (hh) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to object to a

combination of the trial court's charges that implied that the trial court did not believe there were any mitigating factors presented (R.T. 1444, 1449). The trial court defined mitigating circumstances for the jury and charged, "You should consider the mitigating evidence presented by the evidence, if any." (R.T. 1444). The trial court's charge was proper.

93. In part (ii) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to object to the trial court's charge wherein it instructed that the jury should rather than must consider any evidence in mitigation. The trial court's charge was a proper charge. See Romine v. State, 251 Ga. 208, 305 S.E.2d 93 (1983).

94. In part (jj) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to object to the trial court's charge wherein it instructed the jury that the only way to impose a life sentence was if it decided that the defendant deserved mercy. Alderman argues that the trial court's charge was tantamount to a judicial comment that the prosecutor had proved aggravating circumstances and that not mitigating circumstances existed. (R.T. 1449-1450). The trial court charged the jury, "You may ....provide for a life sentence for the accused because of any mitigating circumstances presented by the evidence...You may also recommend mercy, that is, a life sentence, for any reason satisfactory to you or for no reason, whether or not you find the existence of a mitigating circumstance from the evidence presented to you in this case." (R.T. 1449). This was a proper charge by the trial court.

95. In part (kk) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to request an instruction that the jury did not have to unanimously find a mitigating circumstance before it could be considered. In Jenkins v. State, the Georgia Supreme Court held that it is not error to fail to give this instruction. 269 Ga. 282, 296, 498

S.E.2d 502 (1998). Therefore, trial counsel was not ineffective for not requesting this instruction.

96. In part (ll) of Claim I of the Amended Petition, Alderman alleges that trial counsel unreasonably failed to locate John Sato. The evidence presented shows that trial counsel went to great lengths to discover the whereabouts of Sato. (Resp. Ex. 18; R.T. 1014-1015, 1248-1249).

97. In part (mm) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to timely object to the form of the jury's verdict. Alderman fails to state what objection to the verdict form should have been made by trial counsel.

98. In part (nn) of Claim I of the Amended Petition, Alderman alleges that trial counsel failed to pursue on appeal errors that occurred at the guilt/innocence phase of Alderman's capital trial. Alderman fails to state what alleged errors that trial counsel failed to pursue on appeal. Furthermore, Alderman fails to show how the performance of trial counsel in this regard fell below an objective standard of reasonableness.

5. Conclusion

99. Applying in Alderman's case, the guiding principles set forth by the United States Supreme Court and adopted by the Georgia Supreme Court, i.e., according a strong presumption of effectiveness to trial counsel's conduct, viewing trial counsel's representation under the totality of the circumstances and from the perspective of trial counsel at the time of trial, and presuming the reasonableness of judgment calls and trial strategy, this court concludes that trial counsel performed both reasonably and effectively in their representation of Alderman. Alderman has failed to establish that he received ineffective

assistance of trial counsel under either prong of the Strickland standard and relief on this claim is denied on the merits.

B. Ineffective Assistance of Appellate Counsel

100. In Claim II of the Amended Petition, Alderman alleges that counsel rendered ineffective assistance of counsel when they unreasonably and prejudicially failed to raise meritorious issues on appeal and by extraordinary motion for new trial. Alderman asserts that, but for counsel's ineffective assistance of counsel, there is a reasonable probability that the result of the re-sentencing direct appeal would have been different. Alderman has presented no evidence or argument to support his claim of ineffective assistance of appellate counsel, and he has failed to establish that appellate counsel were ineffective in their representation of Alderman.

101. The Strickland standard applies in judging claims of ineffective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.E.2d. 821 (1980); Gaither v. Cannida, 258 Ga. 257, 372 S.E.2d 429 (1988). In applying this standard in the context of appellate counsel effectiveness, counsel need not present every argument, regardless of its merit. Rather, one of the most important elements in handling an appeal can be the narrowing of available issues to those which have the most promise of success. Jones v. Barnes, 463 U.S. 745 (1983). "Appellate counsel does not have a duty to raise every nonfrivolous issue available to him." Hammond v. State, 264 Ga. 879, 887, 452 S.E.2d 745 (1995). Rather, it is the attorney's decision as to what issues should be raised on appeal, and that decision, like other strategic decisions of the attorney, is presumptively correct absent a showing to the contrary. Gaither, supra; Jones, supra.

102. Alderman's claim of ineffective assistance of appellate counsel must fail as he has failed to establish that the

performance of appellate counsel fell below an objective standard of reasonableness or that he suffered actual prejudice as a result of any unreasonable performance by appellate counsel.

DISPOSITION

Based upon the above findings of fact and conclusions of law, this court hereby orders that the writ of habeas corpus is DENIED as to the sentence of death under indictment number 91-CR-165 in the Superior Court of Chatham County. The clerk of the Superior Court of Butts County is directed to serve a copy of this Order on the Petitioner, Petitioner's counsel in this action, the Respondent, the Attorney General, the District Attorney of the Chatham Judicial Circuit and the additional parties listed below.

IT IS SO ORDERED this 29th day of December, 1999.

s/ JOHNNIE L. CALDWELL, JR.

Judge, Superior Court of Butts County

Sitting by Designation

Copy to be served on:

Stephanie C. Deal, Esq.

Council of Superior Court Judges

18 Capitol Square, Suite 108

Atlanta, Georgia 30334

APPENDIX J

Supreme Court of the United States

Office of the Clerk

WASHINGTON, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

March 1, 2007

Mr. Thomas H. Dunn
Georgia Resource Center
303 Elizabeth St., NE
Atlanta, GA 30307

Re: Jack E. Alderman
v. William Terry, Warden
Application No. 06A826

Dear Mr. Dunn:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Thomas, who on March 1, 2007 extended the time to and including May 7, 2007.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Suter, Clerk

/s/ Heather Trant

Heather Trant
Case Analyst

Supreme Court of the United States

Office of the Clerk

WASHINGTON, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

NOTIFICATION LIST

Mr. Thomas H. Dunn
Georgia Resource Center
303 Elizabeth St., NE
Atlanta, GA 30307

Clerk
United States Court of Appeals for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

APPENDIX K

6th Amendment to the Constitution

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

14th Amendment to the Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such

male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX L

Relevant sections of Title 28 of the United States Code.

28 USC Section 1254 (1) – (2)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 USC Section 2254(d) (1)-(2)

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim - (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

APPENDIX M

[1] IN THE SUPERIOR COURT OF CHATHAM COUNTY
FOR THE EASTERN JUDICIAL CIRCUIT OF GEORGIA

THE STATE OF GEORGIA

V.

JACK ALDERMAN

INDICTMENT 23,498 -- Murder

VOLUME I - MARCH 26, 1984

Transcript of the proceedings at the trial of the above matter, beginning on the 26th day of March, 1984 and ending on the 1st day of April, 1984, in the Court House at Savannah, Chatham County, Georgia, before a Jury and The Honorable Frank S. Cheatham, Jr., Judge, Superior Court, E.J.C. of Georgia.

APPEARANCES:

For The State: DAVID LOCK, ESQ.,
WILLIAM SEARCEY, ESQ.,
Assistant District Attorneys,
Savannah, Georgia.

For The Defense: G. TERRY JACKSON, ESQ.,
MICHAEL SCHIAVONE, ESQ.,
Savannah, Georgia.

Reported By: BARBARA B. WRIGHT,

Certified Court Reporter A-9,

Savannah, Georgia.

* * *

[12] . . . . THE COURT: All right, Mr. Searcey.

MR. SEARCEY: Your Honor, if I may – I should have done this this morning with the whole panel: I may have to do it with each individual and I hope the Court will bear with me.

EXAMINATION BY MR. SEARCEY:

Q. Mrs. Bell, my name is Bill Searcey, this is Mr. David Lock. We will be presenting the case for the jury's consideration on behalf of the State. These two gentlemen back here are Terry Jackson and Mr. Schiavone, are representing the defendant in this case, who is Mr. Alderman, to Mr. Schiavone's right over here.

APPENDIX N

[737] IN THE SUPERIOR COURT OF CHATHAM COUNTY FOR THE EASTERN JUDICIAL CIRCUIT OF GEORGIA

THE STATE OF GEORGIA

V.

JACK ALDERMAN

INDICTMENT 23,498 -- Murder

VOLUME IV - MARCH 26, 1984

Transcript of the proceedings at the trial of the above matter, beginning on the 26th day of March, 1984 and ending on the 1st day of April, 1984, in the Court House at Savannah, Chatham County, Georgia, before a Jury and The Honorable Frank S. Cheatham, Jr., Judge, Superior Court, E.J.C. of Georgia.

APPEARANCES:

For The State: DAVID LOCK, ESQ.,
WILLIAM SEARCEY, ESQ.,
Assistant District Attorneys,
Savannah, Georgia.

For The Defense: G. TERRY JACKSON, ESQ.,
MICHAEL SCHIAVONE, ESQ.,
Savannah, Georgia.

Reported By: BARBARA B. WRIGHT,

Certified Court Reporter A-9,

Savannah, Georgia.

* * *

[880] MR. SCHIAVONE: Yes, your Honor.

THE COURT: Call your witnesses, then.

MR. SCHIAVONE: Marvin Massey.

MARVIN MASSEY WAS SWORN AS A WITNESSES FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

Q. Mr. Massey, would you state your name, please to the Court?

A. Marvin Massey, Marvin Eugene Massey.

Q. And where do you live at this present time?

A. West Columbia.

Q. All right, and how are you presently employed?

A. With Piggly-Wiggly. I'm a store manager with Piggly-Wiggly.

Q. Store manager with Piggly-Wiggly?

A. Right.

Q. And back in 1974, around September or August of '74, where were you employed?

A. Piggly-Wiggly in Garden City.

Q. All right, and was this the same Piggly-Wiggly that Mr. Raymond Shores was the manager?

A. That's correct.

Q. And at that time was Jack Alderman employed?

A. He sure was.

Q. All right, back then did you know Jack?

[881] A. Very well.

Q. And Jack was third level manager?

A. That's correct.

Q. And you had occasion to work with him on a daily basis?

A. Yes, sir.

Q. Would you characterize him as being reliable and dependable?

MR. LOCK: Your Honor, I would object to leading questions, however.

THE COURT: Don't lead the witnesses.

Q. All right, how would you characterize Mr. Alderman as a manager - - as an assistant manager?

A. I felt like he was reliable. He and I had several dealings together, working together and all, and I thought he was a first class employee.

Q. All right, did you ever have an occasion when Jack injured himself? Were you present?

A. I was present, but it's been a long time ago.

Q. Do you remember anything about it? Do you recall -- I know it's been a long time.

A. The only thing that I can remember is that a roller, a conveyor that we roll groceries off trucks, fell and hit his hand.

Q. And was he cut?

A. I don't remember.

[882] Q. Okay, now, in your -- did you ever socialize with him?

A. Yes, I did.

Q. And would that have been with both him and his wife?

A. Not so much with his wife.

Q. All right, did you have an occasion to attend church with him?

A. Yes, I did.

Q. Were you members of the same church?

A. If my memory serves me correctly, I wasn't a member. I think we both just attended the church. I'm not sure if both of us were members.

Q. All right, was that the same church that Raymond Shores was a deacon?

A. That's correct.

Q. And a Reverend Hilton, was he the pastor?

A. That's correct.

Q. And back at the time that you knew Jack up until the time that this thing happened, you never had any problems?

A. No, Jack had – he and I both had motorcycles and we rode motorcycles together and he had told me that he'd had problems in the past, he was trying to turn his life around. That's why he started attending church.

MR. SCHIAVONE: All right, thank you very much.

CROSS-EXAMINATION BY MR. SEARCEY:

Q. Mr. Massey, do you know how old Mr. Alderman was at the [883] time you knew him ten years ago?

A. I can guess. I'd guess him twenty-six, twenty-seven.

Q. And how old were you at that time, sir?

A. Seventeen.

Q. And what you knew about Mr. Alderman was confined primarily to your association with him as a worker at Piggly-Wiggly?

A. Pretty much, yes, sir.

Q. He was twenty-six, you say, about twenty-six and you were seventeen.

A. That's correct.

Q. Spend a lot of time with him?

A. I'd say a fair amount. We rode motorcycles together from time to time.

Q. Did you ever visit his home?

A. Which one?

Q. The one at Chatham City.

A. No, sir.

Q. Never went to that place at all?

A. Not that I can remember.

Q. Never saw Alderman and his wife together at any time?

A. Yes.

Q. In the home?

A. In Effingham County I did, once.

Q. All right, when they were living there?

[884] A. That's right.

Q. But at the Chatham City apartment where they lived, you never went in the place.

A. Not that I can remember.

Q. You never saw them in that apartment together.

A. Not that I can remember.

Q. All right, you don't know anything about their relationship as man and wife at that time.

A. No, sir -- what are you trying to say exactly?

Q. I'm trying to ask you questions about what you know about Mr. Alderman.

A. Yes, sir.

Q. You know nothing about his -- I'm saying to you, do you know anything about his relationship with his wife, Barbara Alderman? His wife at that time.

A. As far as I knew, it was a good relationship. That's all I knew.

Q. As far as you knew, but you knew nothing about his home life. You never visited in his home or anything like that, did you?

A. No, sir.

Q. Never saw Mr. Alderman and his wife together in their home.

A. No, sir.

Q. You knew nothing whatsoever about the relationship [885] between Mr. Alderman and his wife.

A. No, sir.

Q. So in short, all you know, sir, is -- I'm not quarreling with you, don't misunderstand -- all you know is that he was a good employee with you where you worked.

A. That's right.

Q. And in riding the motorcycles he was a pretty nice fellow.

A. That's right.

MR. SEARCEY: Okay, sir, that's all I have.

MR. SCHIAVONE: You can step down Mr. Massey. Can this witness be excused?

THE COURT: Yes, sir.

MR. LOCK: Sure.

(NOTE: The witness withdrew)

MR. SCHIAVONE: Father Richard Wise.

RICHARD WISE WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE.

Q. Would you state your name, please?

A. Father Richard Wise.

Q. And Father Wise, where -- I'm not sure how to ask you this -- do you have a parish, or of that nature?

A. I'm associate pastor at St. Phillip . . . Church in Jonesboro.

[886] Q. In Jonesboro?

A. That's right.

Q. And what's your background? What's your educational background?

A. I received my bachelor's degree from St. Joseph's College in Rensselaer, Indiana, and master's degree from Catholic Theological Union in Chicago, which is a subsidiary, I guess, of the University of Chicago.

Q. Okay, now, in the course of your work, have you ever had an occasion to see Jack Alderman while he was on Death Row in Jackson?

A. Yes. I'm one of the Catholic Chaplains for the prison at Jackson.

Q. All right, and what type of contact did you have with Mr. Alderman?

A. Usually I saw him once a week, every week, usually on Wednesdays.

Q. Okay, and for how long a period would this occur?

A. I began going there in 1980.

Q. All right, and during the course of those encounters, did you have any discussions with him about general topics, all types of topics?

A. We talked about a lot of different things, including religion, a lot of things about his life, his outlook on life, the different things he would write.

[887] Q. At that time, was he writing poetry? Is that one of the writing that - - -

A. Yes.

Q. And were you able during that period of time to make a determination of an opinion as to Jack? Did you formulate an opinion as to Jack?

THE COURT: Just be a little bit more specific.

Q. An opinion about Jack as an individual.

A. Yes. I felt that I could trust Jack Alderman.

Q. Had he always been honest to you?

A. I felt so.

Q. Now, you've had an occasion to talk with a number of people up at Jackson, have you not?

A. I work primarily on Death Row.

Q. So Jack's not the only inmate that you would have occasion to speak with?

A. No.

Q. And what type of background had you had before going and working, having part of your duties at Jackson? What other exposure had you had to people that might be involved in the type of situation that these people were?

A. Well, I worked nine years in the inner city in Cleveland and Chicago, worked seven years -- I've been seven years in the prison, in jail ministry, two years in Cleveland, one year in Chicago, four years here.

[888] Q. Are you ever faced with people that are not -- are less than truthful to you?

A. Oh, year, sure.

Q. Okay, that's not unusual, is it, in an environment such as Jackson?

A. No. No, not unusual at all.

Q. So you've had time and you've been able to -- have you been able to determine whether or not a person is being up front with you completely?

A. I think I have. I think I have a pretty good sense of discernment when it comes to truthfulness and whether or not I'm being conned.

Q. All right, and in your communication with Jack, do you have -- have you formulated an opinion about his honesty and truthfulness to you?

A. I believe Jack Alderman was probably one of the most honest people I've met in prison work.

Q. All right, would you believe him under oath?

A. Yes.

MR. SCHIAVONE: That's all the questions I have.

MR. SEARCEY: No questions, sir.

MR. SCHIAVONE: Thank you, Father, for coming up.

THE COURT: Step down, Father. You may be excused.

(NOTE: The witness withdrew)

THE COURT: Those are the two you wanted to put on now?

APPENDIX O

[992] IN THE SUPERIOR COURT OF CHATHAM COUNTY FOR THE EASTERN JUDICIAL CIRCUIT OF GEORGIA

THE STATE OF GEORGIA

V.

JACK ALDERMAN

NO. 23,498 -- Murder

VOLUME V - MARCH 30, 1984

Transcript of the proceedings at the trial of the above matter, beginning on the 26th day of March, 1984 and ending on the 1st day of April, 1984, in the Court House at Savannah, Chatham County, Georgia, before a Jury and The Honorable Frank S. Cheatham, Jr., Judge, Superior Court, E.J.C. of Georgia.

APPEARANCES:

For The State: DAVID LOCK, ESQ.,

WILLIAM SEARCEY, ESQ.,

Assistant District Attorneys,

Savannah, Georgia.

For The Defense: G. TERRY JACKSON, ESQ.,

MICHAEL SCHIAVONE, ESQ.,

Savannah, Georgia.

Reported By: BARBARA B. WRIGHT,

Certified Court Reporter A-9,

Savannah, Georgia.

* * *

[Testimony of Dr. Smith]

Background information reveals that Mr. Alderman was reared by his grandmother and his father after his mother had abandoned the family when he was approximately three, and his younger sister, less than a year of age.

He describes a fairly normal and happy childhood with the exception of an accident at age three, in which he stuck himself in the eye with a knife when he was trying to cut a string. He goes on to say that after several operations he was released [1,041] from the hospital and as fate would have it, a quote, mentally retarded child, quote, stuck a hacksaw blade in the same eye that very day and ripped out most of the cornea, iris and pupil, leaving him totally blind in that eye.

He further states that despite cortisone treatments and everything else that they have tried, sympathetic blindness began to develop in the right eye and at the age of sixteen or fifteen, he spent a year at the Georgia School for the Blind.

After this, his vision continued to become worse, Finally, as a desperate maneuver, his left eye was enucleated and a prosthesis was implanted. That means that the eye was taken out and an artificial eye was put in and, as frequently happens when this occurs, the vision in the right eye began to improve and at present he has approximately 20/25 vision in the right eye, with impaired death perception and, quote, acute colorblindness, end of quote.

MR. JACKSON: That's depth perception.

MR. SCHIAVONE: Depth perception, I'm sorry, and quote, acute colorblindness, quote.

* * *

[1,061] MR. SCHIAVONE: Judge, we move to tender these into evidence if they have no objection.

THE COURT: Any objection?

MR. SEARCEY: No, sir; no objection.

THE COURT: All right, they're admitted.

MR. SCHIAVONE: That's all the questions we have. You're excused.

(NOTE: The witness withdrew.)

MR. SCHIAVONE: We would call Wayne Beasley.

WAYNE BEASLEY WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

Q. Mr. Beasley, would you state your name, please?

A. Wayne Beasley.

Q. And how are you employed, Mr. Beasley?

A. I own Quality Cycles.

Q. And how long have you owned Quality Cycles?

A. I've owned it for about three years.

Q. All right, and back in 1974, where were you employed?

A. I was employed at Quality Cycles, since 1973.

Q. Since 1973. And back in -- well, do you know the defendant, Jack Alderman?

A. I know him very well.

Q. All right, how long have you known Jack?

A. Since junior high school.

[1,062] Q. All right, and back in the year 1973 and 1974, did you know him -- I mean, you've known him since then, but did you know him on a regular basis back then? Did you see him regularly?

A. Yes.

***

Q. Now, going back and discussing Jack, how well did you know Jack? I know you knew him for a period of time, but how well?

A. We were very close friends during junior high school and high school.

Q. Okay, what type of individual was he?

A. Very passive, intellectual type person.

Q. All right, and when you knew him back on the basis of '74, was he dependable?

A. I'm sorry.

Q. Was he dependable back in '74 when you were talking about the bike?

A. Yes.

Q. Do you feel like you could rely on him?

A. Yes.

Q. Was he honest?

A. Yes.

Q. Did you know him socially at all during that period?

A. Occasionally.

Q. And was he honest?

[1064] A. Yes.

Q. Was he always honest to you?

A. Yes. In fact, when we had discussed his buying the motorcycle earlier in the week, I agreed to hold it for him until the week-end, when he could bring me the hundred dollars to put down on it.

MR. SCHIAVONE: That's all the questions I have.

***

MR. SCHIAVONE: Officer C. H. Hess.

C. H. HESS WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

Q. Would you state your name to the Court?

A. Sir?

Q. Would you state your name to the Court?

A. Charles H. Hess.

Q. And Mr. Hess, are you presently employed?

A. Yes, sir.

Q. Where are you employed?

A. I'm at the correctional institute in Reidsville, Correctional Institute.

Q. Okay, that's the Reidsville State Prison?

A. This is a brand new prison, just been opened.

Q. All right, and how long have you been employed as a guard, as a prison guard?

A. Come July it will be eleven years.

Q. All right, and did you ever have occasion to know Jack [1069] Alderman as an inmate?

A. Yes, sir.

Q. And where was that? Where was he housed?

A. He was over at Georgia State Prison, the prison at Reidsville, Georgia, on the fourth floor.

Q. All right, and what's the fourth floor?

A. That's Death Row.

Q. Death Row?

A. Yes, sir.

Q. And how long did you know Jack there, that he was incarcerated? How long was Jack - - -

A. Twelve, fourteen months.

Q. All right, and during that period what type of inmate was Jack?

A. He never give me any trouble no way at all.

Q. Okay, did you consider him a model inmate?

A. Yes, sir.

Q. Did you ever have occasion to see him reading his Bible?

A. Yes, sir.

Q. Did he receive regular visits from ministers and priests?

A. Yes, sir.

MR. SCHIAVONE: That's all the questions I have.

CROSS-EXAMINATION BY MR. SEARCEY:

Q. Do you know anything about Mr. Alderman before you met [1070] him at the prison?

A. No, sir.

MR. SEARCEY: Thank you, sir. No questions.

THE COURT: You may be excused, sir.

(NOTE: The witness withdrew.)

MR. SCHIAVONE: Officer Gray.

ROBERT GRAY WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY M. SCHIAVONE:

Q. Would you state your name, please?

A. Robert Gray.

Q. And Mr. Gray, how are you employed?

A. Georgia State Prison.

Q. Okay, how long have you been employed in that capacity?

A. Almost ten years.

Q. All right, and in that capacity, did you have an occasion to supervise Jack Alderman as an inmate?

A. Yes, sir.

Q. And where -- that was in Reidsville or Jackson?

A. Reidsville.

Q. All right, and during that period, did Jack ever cause any problems as an inmate?

A. No, sir, not a bit.

Q. All right, generally what type of inmate was he? Do you remember in terms of -- as an inmate?

[1071] A. Yes, sir. Jack was a good inmate. He didn't cause no trouble, won't pester you for different things, like most of them do. He was real quiet and in a mannerly order all the time.

Q. All right, and did you ever have occasion to see him being visited by ministers and priests?

A. Yes, sir. They would come up on the floor and go down and talk to different inmates.

MR. SCHIAVONE: That's all the questions I have.

MR. SEARCEY: No questions, sir.

THE COURT: You may be excused.

(NOTE: The witness withdrew.)

VALLE FREEMAN WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

Q. Will you state your name to the Court, please?

A. Valle Freeman.

Q. And Mr. Freeman, where do you live?

A. In Thunderbolt.

Q. Thunderbolt. Now, back in 1974 where were you employed?

A. City of Savannah.

Q. All right, and back in 1973 where were you employed?

A. City of Savannah.

Q. During that period, did you know Jack Alderman?

A. I did.

Q. All right, and was he employed with the City of Savannah?

[1072] A. Yes sir.

Q. And do you remember what department his employment was?

A. He was in the parts department.

Q. All right, did you ever have occasion to see him while -- during working hours?

A. Yes.

Q. And was Jack a dependable employee?

A. He was.

Q. Was he reliable?

A. Yes, sir.

Q. Was he honest?

A. Yes.

***

MR. SCHIAVONE: Officer Holland.

J. P. HOLLAND WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

Q. Would you state your name, please?

A. J. P. Holland.

Q. And Mr. Holland, how are you employed?

[1075] A. Georgia State Prison correctional officer.

Q. All right, how long have you been employed in that capacity?

A. Since March 21, '69.

Q. All right, and did you ever have an occasion to supervise Jack Alderman as an inmate?

A. I did.

Q. And do you remember how long that period was?

A. Not really.

Q. During that period, was Jack a good prisoner?

A. (Pause) I would say so, probably.

Q. And did you ever have an occasion to see him study the Bible?

A. I did, on very -- quite a number of occasions.

MR. SCHIAVONE: All right, that's all the questions I have.

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CARL W OLIVER WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

[1077] Q. Would you state your name, please?

A. Carl W. Oliver.

Q. Okay, and are you presently employed?

A. No, sir. I'm retired now, sir.

Q. All right, and when you were employed, how were you employed?

A. I was employed at the old county jail.

Q. All right, and what was your rank?

A. Just a turnkey is all they called me.

Q. Okay, did you have an occasion to know Jack Alderman in the old jail back in '73 and '74?

A. Yes, sir.

Q. And did you see him on a regular -- you know, obviously he was in there, but did you see him on a regular basis?

A. No, sir, I never did see him on a regular basis. I seen him while he was in the jail there.

Q. All right, and what type of inmate was he at the old jail?

A. Very good inmate.

Q. All right, did he do any types of work within the jail?

A. Yeah, he'd help volunteer, clean the jail, help with the shop order that Tony Yatro'd bring in there, you know.

Q. All right, and some of this was volunteer work?

A. Yes.

Q. That he volunteered to do?

[1078] A. Yes, sir.

***

JAMES FITZGERALD WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

Q. Could you state your name, please?

A. James Fitzgerald.

Q. And how are you employed, Mr. Fitzgerald?

A. At the Georgia Diagnostic Center.

Q. All right, and that's in Jackson, Georgia?

A. Yes, sir.

Q. How long have you been employed with the State?

A. Thirteen years.

Q. All right, and during the course of your employment, did you have occasion to supervise Jack Alderman as an inmate?

A. Yes, sir.

Q. And do you remember how long that period was? Do you recall that?

A. I started in January of '83.

Q. All right, and did you -- what type of inmate was Jack?

A. He was very cooperative. He never gave me any problem.

Q. All right, did he ever do any volunteer work that would [1079] not have been required of the inmates?

A. He cleaned up the cellhouse. It was volunteer.

Q. All right, and did you ever have occasion to see him with ministers or priests on a regular basis?

A. It was at least three or four times a week.

Q. All right, and you never had any problems with him.

A. No, sir.

***

RALPH BATTLE WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

Q. Would you state your name, please?

A. Ralph Battle.

Q. And how are you employed?

A. I work for the Georgia Diagnostic Center in Jackson, Georgia.

Q. All right, how long have you been employed there?

A. Eight years.

Q. And during the course of your employment, did you ever come to know Jack Alderman as an inmate?

A. Yes.

Q. And what type of inmate was Jack?

[1080] A. He was a regular inmate, you know.

Q. Was he a good inmate? I mean, did he cause you any problems?

A. No. He didn't cause any problems.

Q. All right, did Jack, did he ever try to help other inmates inside the cellblock or wherever he was housed?

A. Yes. The cellblock we're in was administrative segregation and when we had one, a problem, he would help, talk to them and help us.

***

WILBUR H. SPRADLEY WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

Q. Would you state your name, please?

A. Wilbur Herman Spradley.

Q. All right, Mr. Spradley, and how are you employed?

A. GD&CC in Jackson, Georgia.

Q. All right, and how long have you been employed in that capacity?

A. Five years.

Q. All right, and during he course of your employment, did you ever have an occasion to supervise Jack Alderman as an inmate?

A. Yes, I did.

Q. And during the course of that supervision, was Jack a good inmate in terms of the way he acted while incarcerated?

[1082] A. Yes.

Q. Did Jack ever do any jobs or anything that -- other than being incarcerated, were there anything -- any type of work that he did?

A. Yes. Jack worked in the cellhouse for us several months probably ten or eleven months, as what we call runaround. He helped with the other inmates and with the laundry and the serving food and cleaning up the cellhouse and so forth, anything that we asked him to do.

Q. Okay, never had any problems with him?

A. No.

***

STEVE BALL WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

Q. Would you state your name, please?

A. Steve Ball.

Q. And where are you employed?

A. Georgia Diagnostic Center in Jackson.

Q. All right, how long have you been employed in that capacity?

[1083] A. Since 1979.

Q. All right, and during the course of your employment, did you ever have the responsibility of supervising Jack Alderman as an inmate?

A. Yes, sir.

Q. And was Jack a good inmate in terms of supervision?

A. Yes, sir. He always did what we asked him to do and performed all of the duties required of him.

***

TROY MARTIN WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

Q. Would you state your name, please?

A. Troy Martin.

Q. And how are you employed, Mr. Martin?

A. Georgia Diagnostic Center in Jackson, Georgia.

Q. How long have you been employed with the State?

A. Four and a half years.

Q. All right, and during the course of your employment, did you have an occasion to supervise Jack Alderman as an inmate?

A. Yes, sir.

[1084] Q. And was Jack a good prisoner?

A. He never give us any trouble at all.

Q. All right, were there any occasions in which Jack may have helped you, helped you to maintain a balance there?

A. Yes, sir. He worked outside in the cellhouse from the time he come out of H House until they moved him over to D House there for about, I guess six months he worked every day. He never give us any trouble.

Q. Did he ever have occasion to help other inmates?

A. Yes, sir.

Q. Okay, in what respect?

A. Well, we -- he was on the feeding detail and he'd see that all the other prisoners in that one house got fed and that was three times a day, he'd go around and check and see that no one was skipped or anything and he was a good prisoner.

Q. All right, did that make your job easier?

A. Yes, sir, it sure do.

***

CALVIN BERRY WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

[1085] Q. Would you state your name, Mr. Berry?

A. Calvin Berry.

Q. And how are you employed?

A. I'm a senior correctional officer.

Q. All right, at what institution?

A. Georgia Diagnostic & Classification Center.

Q. All right, how long have you been employed in that capacity?

A. Seven and a half years.

Q. All right, and during the course of your employment, did you ever have an opportunity to know Jack Alderman?

A. Yes, I did.

Q. All right, in what capacity was that?

A. I was assigned the responsibility for sociological testing and evaluation as ordered by Judge Wilbur Owens, Federal Judge -- not for him specifically, but for all Death Row inmates.

Q. All right, you had occasion to counsel Mr. Alderman?

A. Yes, I did.

Q. And did you run an IQ test on him?

A. That's part of the test battery we give.

Q. Do you recall what Mr. Alderman's IQ was?

A. There are several subtests. He ranged between 119 and 124, which is -- 120.

Q. All right, and what classification would that be? What does that mean? What level does that mean?

[1086] A. Normal is considered 90 to 109; bright normal, 110 to 119; superior is 120 to 129.

Q. So he's classified in the superior category?

A. Yes.

***

JULIUS L. ELLIS WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

Q. Would you state your name, please?

A. Julius L. Ellis.

Q. And how are you employed?

A. State Correction Department.

Q. And how long have you been employed in that capacity?

A. About eight years.

Q. All right, and during the course of your employment, did have an occasion to supervise Jack Alderman as an inmate?

A. Yes, sir.

Q. And do you recall how long a period that was?

A. A little over a year.

Q. All right, and during that period, was Jack a good inmate?

[1087] A. I would class him that.

Q. All right, did you have any problems with him?

A. No. In fact, Jack held trouble down a lot of times.

Q. All right, what do you mean by that, that he helped trouble down?

A. When some of them get to arguing or something, he would -- he would a lot of times settle it, get them to settle their argument without us having to do it.

Q. All right, did that help you?

A. Yes, sir.

Q. All right, were there any occasions in which he was able to confiscate weapons?

A. Jack brought me several knives or material to make knives out of that the inmates had got in the house.

***

[1088] JERRY L. WILSON WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

Q. Would you state your name, please?

A. Jerry L. Wilson.

Q. And where are you employed now, Mr. Wilson?

A. Piggly-Wiggly, Carolina.

Q. All right, and back in 1973 and '74 where were you employed?

A. I was with Piggly-Wiggly at Garden City.

Q. All right, and in the course of your employment, did you come to know Jack Alderman?

A. Yes, I did.

Q. All right, and how did you know Jack?

A. Well, Jack was the third man at the store. At the time, I was meat department manager and he was a well-liked person. He and I got along very well. He worked hard as far as, you know, an employee for Piggly-Wiggly.

I remember a time that I needed Jack for helping me with a bunch of children that I work with in the church that I was at and Jack helped me get some ponies that I was looking for at this time and he's that type of person.

Q. Of course, you know what has happened over the past ten years, where Jack has been.

A. Yes, I do.

[1089] Q. You're full aware of that, but during that period that you knew him, was Jack honest?

A. Far as I know, he was.

Q. Was he dependable?

A. Yes, he was.

Q. And you were able to rely on him?

A. Yes.

MR. SCHIAVONE: That's all the questions I have.

CROSS-EXAMINATION BY MR. SEARCEY:

Q. Do you know anything about Mr. Alderman's previous places of employment, if there were any?

A. No, sir, I do not.

Q. You only know about your contact with him at Piggly-Wiggly.

A. Yes, sir.

Q. And you found that to be pleasant?

A. Very pleasant.

Q. You found him to be honest with you?

A. Yes, sir.

Q. And a good worker at the store; is that correct?

A. Yes, sir.

***

WILLIAM TRIPLETT WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

Q. Would you state your name, please?

A. I'm William Triplett.

Q. And Mr. Triplett, where are you employed?

A. I work for the T.J. Morris Company in Statesboro, Georgia

Q. All right, back in 1973 and '74 where were you employed?

[1091] A. I was employed by Piggly-Wiggly.

Q. All right, and that was in Garden City?

A. In Garden City.

Q. All right, and during that period, did you have an occasion to know Mr. Jack Alderman?

A. Yes. I was the assistant manager of the store and Jack was the third man.

Q. All right, how long was he employed at Piggly-Wiggly during that period, up until the time this happened?

A. I guess that was probably seven or eight months, some-thing like that.

Q. All right, and of course, you know what has happened and where he's been since then.

A. Certainly.

Q. Was Jack a dependable employee?

A. Jack was a very good employee, didn't have any complaints on him at all. He and I went in a lot of times at five o'clock is in the morning and worked until five or six o'clock in the afternoon.

We worked long hours, hard hours. He was very intelligent and a very hard worker.

Q. All right, did you ever have an occasion to socialize with him at all?

A. Well, he went to church with us a few times, met us at our house in Pine Forest and went to church with us at First [1092] Baptist Church in Garden City on a couple of occasions. That's all.

Q. During that period, was it just Jack?

A. Just Jack.

Q. And did you consider him to be honest?

A. Yes. Never saw anything to the contrary.

Q. All right, did you consider him to be truthful to you during that period?

A. Absolutely.

Q. Do you have any reason to believe that that wouldn't hold true today?

A. Well, not me personally, no.

Q. You haven't known him in ten years since this happened; is that correct?

A. Right.

* * *

JESSE HILTON WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

Q. Would you state your name, please?

A. Jesse W. Hilton.

Q. Okay, and you're a minister?

A. Yes.

Q. And how long have you been a practicing minister?

[1127] A. Over twenty-five years.

Q. All right, where do you presently reside?

A. I'm pastor of the Liberty Hill Baptist Church in Toccoia, Georgia.

Q. All right, back in 1974, were you a pastor of a church here in Chatham County?

A. I was pastor of the Rothwell Baptist Church in Pooler.

Q. All right, during that period, did you ever come to know Jack and Barbara Alderman?

A. Yes.

Q. All right, in what respect did you meet Jack and Barbara?

A. I first met them as visitors to our congregation and later they became members of the congregation and it was in this capacity I came to know them.

Q. All right, did you have occasion to see both Jack and Barbara together?

A. Yes.

Q. All right, can you recall about the period of time that you knew both of them before this incident happened?

A. I would say that it would be somewhere in the neighborhood of a year to a year and a half. The exact length of time, I'd be rather hardput to say at this moment.

Q. All right, during that period, did you have occasion to baptize Jack?

A. Yes, I did.

[1128] Q. And were both Jack and Barbara active in the church or becoming active in the church?

A. They had become quite active in all the services, not just one, but in most of them.

Q. I see, and during that period were you able to formulate an opinion as to Jack's general reputation in the community for honesty, veracity, and peacefulness?

A. He had a good reputation among the people whom I knew.

* * *

JACK L. ALDERMAN WAS SWORN AS A WITNESS FOR THE DEFENSE AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. SCHIAVONE:

Q. Would you state your name, please?

A. Jack Lloyd Alderman.

Q. And Mr. Alderman, you're Jack's dad; is that correct?

A. That's correct..

Q. All right, Mr. Alderman, I want to ask you some questions about Jack as a boy. Where did you all live when Jack was a child?

A. Pardon? You say where did we live?

Q. Yes, sir. Where did you all live?

A. As a very young child, when he was with his mother, we lived on East Henry and when my mother took him, it was West Bolton Street.

[1133] Q. All right, and did you live there with your mother?

A. Yes, I did.

Q And who all lived in the house?

A. My stepfather, Mr. E. F. Reddick, my mother, myself, and Jack and his younger sister.

Q. All right, now, Jack as a young boy, was he a good boy?

A. Yes. I would say so. He never gave me no trouble.

Q. What type of student was he in grade school?

A. Well, in the fifth grade, he had already went through the sixth grade books and the teacher, his teacher and the principal wanted him to skip the sixth grade, but decided that it would be best not to later on.

Q. All right, do you recall what happened to Jack's eye?

A. Yes, sir. At the age of four, he stuck a knife through it.

Q. And how did that happen?

A. He was with my mother and her husband fishing and they were in a boat and had a fish for him tied to a string. He decided he wanted to cut the string. He reached down and

picked up the fishing knife and when he did that he went around with his hand and went right through his eye.

Q. I see. Was Jack ever a violent little boy?

A. No, sir. He was -- I would say on the calm side for a child.

Q. All right, and as he was growing up, when he got into [1134] high school, where did he go to high school? Do you remember?

A. Savannah High -- he graduated Savannah High and he went -- the year before that, he went to the Georgia Academy for the Blind and before that, he went to -- I think it was Richard Arnold.

Q. All right, why did he have to go to the Georgia Academy for the Blind?

A. He had what they called optical neuritis and he lost -- not all his vision totally, but so much that he couldn't see to read, to write -- in fact, he couldn't see across the street. He could only see the curb that he was standing on to cross the street, if he went across.

Q. All right, did he gain sight in his good eye?

A. Pardon?

Q. Did he regain sight in his good eye?

A. Yes. sir. Well, I don't know -- haven't had it checked recently, but he gained enough sight to go back to high school.

Q. All right, what type of student was he in high school?

A. Well, he was, I would say a real good student. He -- considering he made good grades, because he was still not had perfect vision in his eye and he made real good grades at the Macon, Georgia Academy for the Blind.

Q. Okay, during those years of his being a teenager, from ninth grade up, was Jack a good student?

A. Yes, sir, because when he finished high school, they [1135] recommended him for a job out of high school, which he did get, and that was -- I don't think that they done all students that way.

Q. Now, Jack, for the past ten years has been up the road. You love Jack, don't you?

A. Oh, yes, sir, I surely do.

Q. Have you been to see him up at Jackson?

A. Well, a couple of times I went up. I wanted to go more, but my health wouldn't permit it at that time.

Q. All right, and you've lived through this for ten years.

A. It's been rough, yes, sir.

* * *

[1148] Q. State your name, please.

A. Fred W. Burkel.

Q. Mr. Burkel, where do you live?

A. 2104 Utah Street.

Q. And how long have you lived there?

A. It'll be three years this month.

Q. Were you living at the same address when right across the street from you, in the very next house across the street from you was being occupied by Jack Alderman and his wife, Barbara Alderman?

A. Yes, sir.

Q. Did they live there for approximately nine months while you were living at that residence?

A. They lived there for, I guess, about a year and a half.

Q. All right, sir, and during that period did you have any contact with Mr. and Mrs. Alderman?

A. Yes, sir. They used to come over to my house to play to cards and watch television once in a while.

Q. During that time did you see any difficulty between the two of them? Did they seem to get along together all right?

A. As far as I could see.

Q. All right, sir, and having known Mr. Alderman for this period of time, do you know his general reputation in the community for honesty and peacefulness?

A. It was fine as far as I knew.

* * *

MR. JACKSON: Next would be Ruth Smith on Page 558, who is ill and unable to appear in court, Your Honor.

(NOTE: The testimony of Ruth Smith was read by Messrs. Jackson and Schiavone as follows:)

[1151] Q. Your name is Ruth Smith, is that correct?

A. That's correct.

Q. Where do you live, Mrs. Smith?

A. 621 East 39th.

Q. Okay, and do you know the defendant, Jack Alderman?

A. I've been knowing him since birth -- since his birth, naturally.

Q. So that's twenty-four years?

A. That's right.

Q. Are you familiar with his general reputation in the community for honesty and truthfulness and peacefulness?

A. I certainly am. I know he's one of the nicest people I've ever known.

* * *

MR. JACKSON: Okay, and next would be Mrs. Frank Perkins, who is also ill and unable to attend, Your Honor. That's on Page 560 of the transcript.

(NOTE: The testimony was read by Messrs. Jackson and Schiavone as follows:)

Q. State your name, please, ma'am.

A. Mrs. Frank Perkins.

Q. And where do you live, Mrs. Perkins?

A. 1113 East 36th Street.

Q. Do you know the defendant, Jack Alderman?

A. I've known him since birth, yes.

Q. Okay, did you know Mrs. Alderman also?

A. Well, I never knew her very much because, I mean, '74, I had a sister that was with me and that was dying of cancer and I was all she had to look after her. My time was mostly occupied with her, so I never had a chance of getting out.

MR. JACKSON: The Court said to answer the question yes or no.

[1154] A. I don't know too much about it.

Q. But you've known Jack Alderman all his life.

A. All of his life, yes.

Q. Now, do you know Jack Alderman's general reputation in this community for honesty, truthfulness, veracity, and peacefulness?

A: Re's never told me a lie in his life and I've always found he was one of the finest young men I ever knew.

Q. Could you just state in answer to my question, Mrs. Perkins, is his reputation good or bad?

A. It's good.

APPENDIX P

[1246] IN THE SUPERIOR COURT OF CHATHAM COUNTY FOR THE EASTERN JUDICIAL CIRCUIT OF GEORGIA

THE STATE OF GEORGIA

v.

JACK ALDERMAN

No. 23,498 – Murder

VOLUME VI – MARCH 31, 1984

Transcript of the proceedings at the trial of the above matter, beginning on the 26th day of March, 1984 and ending on the 1st day of April, 1984, in the Court House at Savannah, Chatham Country, Georgia, before a Jury and The Honorable Frank S. Cheatham, Jr., Judge, Superior Court, E.J.C. of Georgia.

APPEARANCES:

For The State: DAVID LOCK, ESQ.,
WILLIAM SEARCEY, ESQ.,
Assistant District Attorneys,
Savannah, Georgia.

For The Defense: G. TERRY JACKSON, ESQ.,
MICHAEL SCHIAVONE, ESQ.,
Savannah, Georgia.

Reported By: BARBARA B. WRIGHT,
Certified Court Reporter A-9,
Savannah, Georgia.

* * *

[Testimony of Jack Alderman] [1346] But do you see that having [1347] anything to do with whether or not -- having anything to do with what we're here for?

A. Yes, sir.

Q. Tell me what.

A. I think we're here to establish character, mine opposed to John Brown's, and I think that anything that is relevant to that can be involved in this issue.

* * *

MR. JACKSON: May it please the Court, Mr. Lock, Ladies and Gentlemen, I finally get to talk to you. All these rules, that we can't make remarks and we can't make comments, finally we get to put the case in perspective as we see it.

I'll just touch very briefly on the District Attorney's closing argument before I get into a review of the evidence and what I think it shows and what I think the law you should consider -- how it matches up here.

The argument reminded me of the song that you all heard, I'm gonna hire a wino to decorate my home. That's exactly what he's saying. Jack Alderman's going to go hire a wino to kill his [1408] wife. That's the State's case. That's their whole case, and that wino is John Brown. That's the only evidence they have in this case.

And you saw him up there and you heard from him and the Judge is going to Charge you on impeachment. That's one of the first things he's going to tell you, that if you find that a witness has made a false statement, has been impeached by bad character, has lied to you, has misstated the facts, you can disregard his testimony entirely, just absolutely take John Brown's testimony and set it aside.

You've got to know he did. I'll get into it in detail, but you've got to know he did. Now, Mr. Searcey in his argument was saying that Jack Alderman's convicted, you all shouldn't worry about that.

That's true, he's convicted. But ten years, he's been sitting on Death Row. A jury found him guilty of murder based on John Brown's testimony.

The Judge is also going to instruct you that you consider and can consider all the evidence of what happened and give it whatever weight you want. If you've got a doubt that he did it, obviously, you can't give him the death penalty.

If you have a question as to John Brown's veracity, of him telling you the truth, obviously you can't give him the death penalty.

Now, the State of Georgia can only ask for the death [1409] penalty in certain cases. As Mr. Searcey outlined to you, there's two aggravating circumstances which they say exist in

this case and he got up here and told you he thought they existed. But that's not good enough.

One of the most important rights we have in this country is a trial and the State has to prove he did it. He has to prove these aggravating circumstances are there, beyond a reasonable doubt. He can't get up here and ask you to guess somebody did something or guess something existed. They've got to prove it.

Now, before I go any further, let me touch on the one about doing it for money. I'll read that sucker to you. The Judge is going to Charge you on this and you're going to have this out with you, too.

They allege that the defendant committed the offense of murder for himself or another for the purpose of receiving money or any other thing of monetary value. I ask you, what evidence, what one piece of evidence do you have that Jack Alderman did this and did it for money?

His wife had some life insurance on her. I guarantee, all your husbands have life insurance, all your wives have life insurance. That's all you heard. There's life insurance there. John Brown said he did it because she was going to divorce him.

You heard me ask him, didn't you say that? You heard Agent Keadle said he did it because she wanted to divorce him. That is the motive that the State has proved. There's no way [1410] around it. That's what they proved.

So Number 1, I submit to you, there's nothing.

All right, Number 2. Now, this is the most complicated, confusing thing in the world, this offense of murder was outrageously or wantonly vile, horrible or inhuman, in that it

involved torture, depravity of mind, or an aggravated battery on the victim.

This little Charge that you all are going to have with you is going to have five pages just on that. It's also going to tell you that you've got -- you should consider the mitigating circumstances.

Basically what this is saying is that a killing is not enough. Now, we know, killings are terrible. Nobody appreciates a killing. This whole thing is a tragedy. Nobody in the world is going to come up here and try to excuse this to you.

Mr. Alderman says he didn't do it. I want you to look at what's going to be out there with you, Defense Exhibit Number 2, and on this one, there's an aggravating circumstance on there that the jury found on John Brown because John Brown told you, told the police, I did it for money. I was thinking about the money.

Right here is his life sentence. Serve life. He's going to get up here and they're going to get up here and ask you to put a death sentence on Jack Alderman.

Now, I'm not going to read this to you and I'm not going to get into any depth as to what this Charge requires other than [1411] to say that it's more than just killing, if you believe that Jack Alderman was involved in this and did this. It wasn't on John Brown's. It sure was in the law back then. But you all will have that thing.

What I'd like to remind you most, though, is that they've got to prove this beyond a reasonable doubt. The Judge is going to tell you, if your minds are wavering and uncertain, that's the doubt that the law requires, and if you find that, then you disregard that aggravating circumstance.

If you're not sure beyond a reasonable doubt, you disregard the thing about money. If you're not sure beyond a reasonable doubt, you disregard this thing about wantonly wild -- whatever it is -- wantonly inflicting this aggravated battery, torture, depravity of mind. It's not in this case.

Now, another jury found Jack Alderman guilty. This is the part that's bugging me. It's got to be bothering you, because you all have seen the evidence. Was there enough evidence here to convict somebody? Sure, you can consider that.

Did somebody make a mistake ten years ago? Has somebody been sitting on Death Row that shouldn't be there? Shouldn't even be in prison? You've heard all they've got.

But you've heard something they didn't have ten years ago. You've heard new witnesses that we -- I mean, we've had -- just imagine what it's like after ten years to try to reconstruct a case, to try to find people that can remember anything. They [1412] didn't hear from Sally Wiess ten years ago.

They didn't hear from Sally Wiess. She told you John Brown's a liar. He never stayed in the same room with me, he never had any sex with me, he never came in my house at two o'clock in the morning, he never got any phone calls at my house. He never moved in there by himself. She told you that.

He's a liar. He sat there and lied to you and he knew I had her. But he also knew we had the transcript. He can't leave that transcript. That's what's called impeaching. We'll get back to him in a minute.

Dr. Conradi testified that there's no strangling, there's no choking, there's no squeezing of the nose, there's no struggle, there's no marks. She said that's not there. Dr. Sullenger said it's not there, but he didn't talk about the nose, he didn't talk about the struggle. He just talked about the strangulation.

So there's stuff that they -- that you've heard that they didn't hear, plus you've seen John Brown. You've heard about John Brown. Why does he want to testify? They're trying to make it look like this is a good guy. This guy is coming down here to be a good citizen now, because there's a little decency in John Brown.

Did you hear what I said? What did you ask for to come down here and testify in this case? He asked for the D.A. to move him to be with his boyfriend. That's how important this [1413] is. He wants his boyfriend with him in prison. And they say, well, there's no evidence of any deal. I don't know if there was a deal. I wasn't on the case ten years ago.

John Brown says there wasn't anything. I'll show you what shows there was. Sentenced to life. And you heard him say no court ever reversed his conviction; he just got life. Somebody gave him life.

Now, I'm going to briefly go into a little of the evidence, if I can. You all excuse me. When I'm up cross-examining somebody, it's very difficult to write notes and I've got to try to read his, and that's not easy. All right, let's see what we've got.

Sheriff Fulcher testifies and he testified that there was a big, hard cardboard thing torn out of the bottom of that car. He didn't say that ten years ago, but he said it this time and he said it wasn't there. They searched all over and it wasn't there.

And John Brown, I guess, would have -- he said he never saw it, but if it was torn out, I guess he'd have you carrying that on a motorcycle, a big, huge, hard, cardboard thing that couldn't be rolled up.

Okay, Agent Keadle -- I'm not going to talk about the ones that didn't say anything to add up to anything -- there was

twenty-five or thirty people at the scene, that they could have stepped all over the evidence. Agent Keadle testified that he saw [1414] Jack Alderman when he identified his wife's body and Jack Alderman did what you would do, what I would do, what anybody would do, he fell apart and he fell on the floor and he said, I don't -- I can't say there wasn't any watery blood on that floor.

First he said there wasn't any down there and I cross-examined him based on what he said ten years ago and he said I can't say that. He said, I didn't look. That wasn't my job. And I don't know what touched the floor. Mr. Searcey is wanting me to tell you how blood got on here.

Well, look at that stain. That's watery blood. You were already told it's blood and the Crime Lab lady said it was watery blood. It's not like from a fresh wound. Dr. Conradi told you that.

You're going to have a picture out there of Barbara on that table with a sheet right next to her head, right where he was standing, that's the same color, the same density. I submit to you that's where it came from, and it doesn't take much to figure that out.

Then we get to John Brown and his testimony to Agent Keadle. Now, apparently -- I can't believe it, but apparently the District Attorney is trying to make it look like John Brown was cooperating.

What happened was, Agent Keadle got some information that John Brown knew something about this, goes to John Brown, and he says, I was in the bar with Jack Alderman. That's all he [1415] said. That's all he said the first time. That's all he said the second time.

And then he gave the third statement and the third statement is the one that you heard us reading from yesterday. He said he carried her head. He said that he did it -- Alderman did it for a divorce. He said he was going to get half of some insurance money.

He said he didn't even know if it was going to be -- the insurance money was in effect. The 23rd he made a statement, the 30th made a statement and the 30th he made another statement.

One interesting thing that Agent Keadle didn't say is Jack Alderman had a big, white bandage on his left hand. Right there on his hand, and did you hear anybody say anything about blood on any bandage? Any blood on his hand? It's on his butt; that's where the blood was.

When he interviewed John Brown, John Brown appeared to be ill. This is the 23rd, two days after the murder. Do you know why he's ill? He's coming down off of another one of his trips and I've never in my life heard a witness talk about drugs like this guy did.

And you heard Mr. Searcey saying that I undressed him right here in front of you. Well, I tried to. You get in a courtroom and you let me be on the other side and you let me think you're lying, you put somebody's life in my hands, you get up there and you try to get him electrocuted, you see what happens, [1416] because of one thing. Not to be mean. So that you all will know the truth.

And when John Brown was testifying, you all didn't hear any truth except that he saw Jack Alderman in a bar, he heard about Jack Alderman being arrested, he put two and two together. It took him four days, five days, to put two and two together and came up with his story.

Everybody wanted some help, because they didn't have any other evidence on Jack Alderman. So they hired this wino. In hiring him, they got a wino.

And Agent Keadle said these statements were not consistent; they were inconsistent. The greatest question that was asked in this entire trial was after I talked to Agent -- asked Agent Keadle questions, David Lock got up -- I asked him about -- when he got up, he asked Agent Keadle, he said well, did you all release any of the details about how this murder happened through the newspaper.

Wanting you all to think that that way John Brown would know what happened. Trying to make it look like John Brown couldn't know what happened. And I got up and I asked Agent Keadle, I said, well, if somebody killed somebody in an apartment, taken their body to the creek, wouldn't they know what happened? He said uh-huh.

Exactly how John Brown knew what happened. He didn't make it up. He did it. He did it. There's no way around it. [1417] He says, I took my blue jeans right here -- you'll have them out there with you -- after we did all these terrible things, I took my blue jeans and I put them in the closet in the bedroom and Jack changed clothes, too, and you ain't heard a word about Jack's bloody, wet clothes.

This is what you've got. Jack was wearing what he had. He said, I changed clothes. He never had John Brown in there. You're going to have these out there, with blood on them, thick blood on them, not watery, stained blood.

There's no signs of a struggle. I'm not going to refer to any questions that anybody asked, sent up to the Judge or anything else, because I can't do that. I'm not allowed and I'm not going to give you any testimony in this case. The testimony

has already come right out of that chair and what documents the Judge is going to let you come back to.

Agent Keadle was asked by me, did you find John Brown's fingerprints anywhere in that car. He said no, we took Mr. Brown's fingerprints, we compared them to the twenty-five or so we lifted from the car, there were none.

Now, this is this drug carrying wino out there, doesn't know what he's doing, somebody's telling him everything to do, that drove the car all the way out there, but he was sharp enough to wipe them off. All you've got to do is just do that; that's all you've got to do.

And you heard the Crime Lab woman say that there wasn't [1418] any evidence that the rug had been cleaned. Now, Ray Shores testified that Jack did come over there and get a hundred dollars and that in fact he came over there to get a hundred dollars about something that they had worked out a week before, something like that, about getting a motorcycle, which is something that you could do or I could do.

But John Brown testified -- I'm going to skip that; this is the heart of the thing. Okay, drove the car, that he went seventy-five to eighty through Garden City, he started taking drugs when he was seventeen years old and he got worse and worse and worse and worse, and he had thousands of barbituates.

Having one's a felony. Just one. And he got up there and told you, I'd bribe people to go tell doctors they were hurting when they weren't hurting, I was taking LSD, opium, marijuana, qualudes -- well, you name it, he took it.

Now, they didn't -- there's nothing they make he didn't take -- maybe heroin. Maybe he couldn't get hold of any heroin. And it went on and on and on and on. I'm not even

going to go through the details of it, except that he came back from Vietnam and it was in his files that he had lost his ability to control himself, he blacked out and did stuff that he didn't know about, he couldn't stop himself from doing and he didn't want anybody to know about it, so what does he do?

He just yanks it right out of the file. Easy solution, except the problem didn't go away. It got worse. He gets busted [1419] for drugs, he gets busted for speeding and all this other stuff, and he was drunk but they didn't need that because they already had enough on him, he gets busted for burglary, and they want you to believe him and put a man to death based on what John Brown says, nothing else. I can't believe it.

Let's talk about the events of that night. All right, we've got John Brown -- this is the way he says this happened. He comes up here, he gets called over there, now. He comes up there and they come in and they sit down. Barbara's back here asleep.

They sit there and Jack Alderman, with his wife right there, now, after talking to him a bunch of times on the phone, his wife's right there, saying I want you to kill her, I want you to kill her, they're sitting out here talking about music and killing his wife.

And this guy wants you to believe that he's sitting there, holding this wrench. He's sitting there. This is the guy that Jack Alderman said his wife didn't like, didn't trust, wouldn't be around by herself. This is who we're talking about.

And he sits in that living room with this wrench and Barbara comes walking out and he's holding the wrench and then he proceeds to follow her around the apartment for thirty to thirty-five minutes.

He misses several opportunities to hit her. She never gets suspicious, she never gets scared. Did she see it? Oh, yeah, she saw it. Did she think anything of it? No. I'm a mechanic. [1420] And then they get up there and act like mechanics carry wrenches around people's apartments. They don't carry them; they leave them at work.

Thirty to thirty-five minutes, and Jack Alderman is sitting there watching all this and right in front of Barbara, he threatens him. The first time he ever said he was threatened, he was in the apartment walking around with a wrench. The first threat.

And you heard the D.A.'s cross-examination of ten years ago of Jack -- of John Brown, because I read it to him. You mean to tell me this little one-eyed man who didn't have a gun, didn't have a knife, didn't have anything, intimidated you into doing this? Yes, sir.

But then we got up here and we find out a little something about John Brown and what was he? He was a bouncer. What's a bouncer do? You all know what a bouncer does. You go and tear up a bar, you go in and get drunk and see who it is that throws you out. It's the bouncer.

And the bouncer ain't some little sissy, because every night he runs into that. You know it. What do they -- I don't understand it. They're asking you to take a man's life legally based on this guy.

They exposed him about stealing or removing those records. The United States did, and they kicked him out of the Army.

[1421] MR. LOCK: Your Honor, I object to that. There was no evidence of that.

MR. JACKSON: They said they -- he said that - - -

MR. LOCK: I'll let it go to the jury.

THE COURT: If there's any difference of opinion between the attorneys as to what the evidence was, rely on your own recollection, please.

MR. JACKSON: Please do. Please do, because I've got to -- I can't write it down when I'm crossexamining. But I think I asked him, did they find out about the records and he said yeah, they found out because they got another copy of it. I think you all remember that.

And he said he was AWOL here in Savannah and that they picked him up and turned him over to the military authorities and that he was discharged under honorable conditions. Now, an honorable discharge and under honorable conditions, if you all have ever been in the Service, you know the difference.

And he has this mental thing. After taking LSD -- I don't know if you all have ever known anybody that played with this, you talk about dynamite, I've known a lot of people because of the kind of business I'm in that have taken LSD, and LSD is not the kind of thing that you pop and it goes away in an hour, five hours.

Five years, it can come back. He said that. He said you never know when you're going out, and when you go out, you are [1422] gone. If you happen to be behind a car or driving a truck in the city lot and run over another truck, whatever it might be, you're gone, and he has these blackouts and these spells, sometimes as long as a month apart.

How many are we talking about? We don't know. I submit to you that we're talking about a bunch of them and that

they're frequent. And he's un -- he cannot control himself, he cannot tell what he's doing, he cannot stop himself from doing it, but he does it, all the time.

He goes to New York, he comes back to the beach, he's getting higher and higher, he has blackouts, he has psychiatric admissions in Clarke Pavilion, he gets LSD locally, his wife takes LSD with him, and he finally meets up with Jack Alderman.

The first thing he says to Jack Alderman is, loan me some money and Jack made the biggest mistake he ever made in his life. He said hello, John Brown. The worst mistake he ever made in his life.

Now he ain't a saint. Stand up, Jack. Come over here with me. This little guy right here is not a saint. Nobody's saying he's a saint. Have a seat. But he ain't a murderer. He loved that girl, and you saw him say how much he loved that girl. After ten years, he hasn't even been able to go to her dadgum grave because of John Brown.

The system doesn't always work. Sure, I borrow money, borrow money all the time. I was taking drugs by the handful. I [1423] had thousands. I had drugs everywhere, but I didn't have a job. I'd work on a car and I wouldn't get paid in money; I'd get paid in drugs. What about your kids and your girlfriend? I don't know where they were.

Who took care of you? I don't know. All I did was take care of one thing, and that's my habit. The most important thing John Brown said in the trial of this case was I asked him, why would you go to Jack or Barbara Alderman and borrow money, which he said he did a lot. He said -- he gave you the whole case -- they had it.

And why did Barbara Alderman get killed? Because Jack wasn't home and she had it. She had a hundred and fifty dollars or something in her pocketbook. She left to go to grandmama's, changed her mind, came back to the apartment, John Brown, who borrowed a wrench that day, that wrench that day from Jack Alderman at three-thirty, comes back, here's Barbara without Jack and he can't push around Jack -- Brown can't push around Jack, because Jack's already told him, I ain't going to loan you anymore money.

Here's Barbara and here's a man needing a fix, needing his drugs. He don't -- a drug addict doesn't even need food. They don't need their kids, they don't need their wives, they don't need nobody; they need a fix, and they'll do anything to get it.

He comes up there and you heard -- you heard the testimony of Waters, the little boy Waters who testified, was over in [1424] the jail, talking to John Brown? And this is exactly what he told him happened. He said, I came up there, tried to borrow money, she wouldn't let me do it, I went inside and busted her head open, I went outside to the car, carrying her with me and took her to the creek and Jack didn't have anything to do with it.

And you heard him sit right here and say, yeah, that's what I testified to ten years ago and he read it out of the transcript. Did you see them stand up and show that didn't happen? Do you see them stand up and show that he didn't say that? Did you see them get up with any of the witnesses that I put up on the stand and show that they lied?

Or did you see me get up and show that John Brown lied? Sworn testimony. And you all saw it. I went through pages, boom, boom, boom. And his story of walking around there for half an hour and all he did was hit her and then he comes over and lays his hand, just like a wet noodle, on her neck.

But that's not what he told Chief Thompson. He said we tried to strangle her until she was unconscious, not I touched her neck. We carried her to the bathroom and I was there when she was covered up with water. Is that what he told you up there? No. He left to go clean up the blood, which never got cleaned up. The Crime Lab woman says so.

There's no marks on her arm, there's nothing. And the Judge is going to Charge you on accomplices. He's going to tell you now, when an accomplice testifies in a case against the [1425] codefendant, he cannot be convicted on that, or you cannot reach your verdict on that unless it's corroborated. That means backed up by something independent.

The Judge is going to tell you that. I'm not the one telling you the law. He's the one. I can't come up here and tell you something that's not so. You listen to him.

What's the corroboration of John Brown? Name me one thing. One thing that he said that is true, besides the fact that he said John (sic) down in that bar, besides the fact that he killed Barbara Alderman. What connects up Jack Alderman?

What is this stuff about a divorce? Did anybody come in here and say, Barbara confided in me that she was going to divorce Jack? Did you hear that? Did somebody come in and say Barbara told me that Jack beat her, that Jack mistreated her?

Or did you see twenty or thirty people come up here and tell you just how good people we're talking about? That's what you heard. They came from Reidsville, they came from Jackson, they came from all over the state to tell you how good a guy Jack Alderman is, and these are guards on Death Row.

And look at who they've got to compare Jack Alderman with. The worst. And do you think they would go out of their

way to help one of these guys that's a coldblooded killer? Uh-uh. They know why they're down here. They know why you're here, to get this man life.

Now, was there a plan? John's saying well, I thought we [1426] ought to do it this way and I was going to take her -- I was going to take her to Bloomingdale, get her to go over there and take me that Thursday night.

First of all, Jack said she didn't go anywhere Thursday night and John Brown told you on the stand that I went over there for dinner and told them that I didn't live at Bloomingdale any longer and Barbara told Jack that John Brown's been evicted again and doesn't live at Bloomingdale.

Now, how much sense is it going to take for somebody to come up to your apartment and say take me to Bloomingdale, you know they don't live there and you don't like being around them to start with and they're a drug addict and they're a dopehead and they're all these terrible things and you're uncomfortable around them and you're going to get out there and just -- a lady and this guy, and you're going to take him all the way out the woods to Bloomingdale and drop him off at a house where you don't know -- you know he doesn't live anymore.

Who's going to do that? Nobody. It's no way. He was drinking. He was popping it, took two speeds and four barbs. Sally drove me over there. Sally said I didn't drive him anywhere. Sally came to Garden City to pick me up. I didn't go pick him up after that motorcycle wreck. Never.

They'd already moved out of my house. What's Sally Wiess got to come in here and lie about? She's not going to come in here and lie to you. Did you hear 'em destroy her on

cross-[1427] examination? I don't even know if they asked her questions, because they know she's telling the truth.

And where's Jack's shorts that were left in the apartment? Where's the twenty-five minutes chasing somebody around? Where is the sense in this? And then he goes out there and says I had eighteen drinks that night, Jack and I did all this, and we left the bar down here at Savannah, we came up here, we picked her up out of the bathtub.

There's no blood in the bathtub, there's no blood in the apartment except for one spot where she fell. Did you hear the testimony of Dr. Conradi? Where is all that blood? Where's the blood in the bathroom? Jack Alderman was there for two seconds when the police came.

He never went back there because he was with John Brown. John never told him he -- never gave him a chance to clean up anything. John Brown's out here playing with the dog with a dead lady back here. Do you believe that?

They wrap her up and in broad -- well, not broad daylight, all the lights in the world, in an apartment complex, they carry this down the stairs and stick it in the back of the trunk. They kill somebody in Jack's own apartment, where people drop by all the time, where all this blood's going to be found, where a murder weapon's going to be found, where the blue jeans are going to be found.

Jack Alderman is so dumb that he's going to do something [1428] like that? They're trying to tell you how smart he is. Only one kind of person would kill somebody like that. That's a person that's not thinking right, and that's a John Brown who wants a fix, and you know it.

I know you know it, because you saw him. Have you ever seen anybody describe being so hooked on something? He could give up his kids and his girlfriend.

Mr. Waters told you that he had a helper, and that was a female helper sitting down in the car. And who did he marry right after he went to jail, after four years of shacking up? The girl he was living with. And why? Because you can't testify against your husband. They can't make you. She's sitting down here in the car.

John comes down and he says, oh, my goodness, you'll never believe what I just did. Did he go to the police? No. They came to him. He was walking out a door with a bag under his arm, going to hit the road.

They want you to think that he rode on a motorcycle - - -

MR. LOCK: Your Honor, I object to some of this testimony, whether a wife or whatever can testify against her husband. It's common knowledge that common law is also under that law, too. He's misinforming the jury as to the law.

MR. JACKSON: You what? Your Honor, I submit to you that a spouse cannot be made to testify against her spouse.

[1429] MR. LOCK: That also applies to common law.

THE COURT: That law is not before the jury.

MR. JACKSON: Your Honor, I don't remember that and I don't see any citations saying that.

THE COURT: The law is not before the jury.

MR. JACKSON: That's right.

THE COURT: So just stay away from that, please, sir.

MR. JACKSON: Okay, you heard the testimony from the police that the defendant wasn't drunk, John Brown said he was drunk, you heard the testimony by the police that they couldn't find anything in the apartment when they went in there looking the very next day, the very next day.

All they found was John Brown's blue jeans. They didn't see any blood or anything. And Jack Alderman's going to go out while the blood is sitting in his apartment, and he's going to do that and know it? You all know better than that.

You heard Jack testify. Now, I asked you all when we got started in this case whether or not anybody had any hang-up about amnesia and didn't believe it could happen. It was because I knew what the testimony in the case was.

Now, I've never understood it and I won't try to understand what could happen to a man, how he could come up on his wife's body in those circumstances and not be able to recall it, but a doctor said that I, in my professional opinion, believe this is genuine, this is what happened, and the State of Georgia [1430] has not put up one bit of evidence to show differently. Not one single bit of evidence to show any differently.

In fact, Mr. Searcey says, I can't even argue that. But after his memory came back, you heard what he said. He didn't say anything about going in there and helping anybody kill anybody. He didn't say anything about hiring anybody. It's not there.

You know whose house this was, don't you? You heard Mr. Searcey say that Brown was just like Alderman and we know what kind of penalty John Brown has. But mainly, we know that Jack Alderman's a person, too. And we know that

it's his wife that died that night and he's had ten years on Death Row because of that.

He's had ten years to think about this. He's not going to -- he's the only one in this courtroom that's not going to go home today. He ain't going home. He's going right back over there, just like he's been doing for ten years, every day, every night, because of John Brown and what he said.

Now, even if somebody's convicted of a crime, they can come in here and ask you for mercy. They get down on their hands and knees and beg you, give me another break, give me another chance. They can come in and show that they're a changed person.

We've show you that Jack Alderman was a good person at the time and that he had a good relationship with his wife at the time and I think you doubt, just like I do, John Brown's story. [1431] You don't have to believe Jack Alderman. You've got to believe John Brown beyond a reasonable doubt told you the truth and the whole truth, plus you've got to see these statutory aggravating circumstances and match that up beyond a reasonable doubt.

And even then, you don't have to give anybody the death penalty. I submit to you, you can't get past the first step, and if any way in the world you could, you sure couldn't get past the second step, of finding these aggravating circumstances beyond a reasonable doubt.

What evidence did you hear that Jack Alderman killed somebody for money? None. Zero. The only thing, John Brown says well, he said something about insurance. Now, is that enough for the twelve of you to agree to let the State of Georgia execute this man?

Is John Brown's testimony enough to let the twelve of you agree that this was such a depraved act that this man should die? All there is, is John Brown. And the thing that kills me is, John Brown's got life, and they have the nerve to ask you to give Jack Alderman death.

They don't have to do it. Their job's finished. The Judge, all he has to do, is make whatever you say the order. After I finish these little comments, I don't get to say anything else.

There's only one man that's going to know what happened besides the twelve of you and he's sitting right there and his [1432] daddy is sitting right back there. And all his friends that got up here and told you what kind of person he is, they're all going to know it and they're going to know it right down here, just like you are.

This isn't the kind of thing where you're gonna -- somebody's going to ask you fifteen years from now, have you ever sat on a jury and you're going to say I don't remember. Let me tell you, you're going to remember it.

Go back there and give that man the death penalty and you're going to remember it, every day the rest of your life. You're going to wonder, was John Brown lying? You've got to have a doubt. You've got to. You've got to. And if you've got a doubt, that means you're just wavering, you're not sure.

He's going to tell you, give him life. That's the plain and simple facts. Now, we've been talking a good while and one thing I want to leave you with. Pay attention to what the Judge says.

Pay attention to what he's going to say and what Mr. Searcey said and what I said and what evidence you heard, but the decision is going to come down to you. Just one thing I'd like to point out.

Did you ever see anybody catch Jack Alderman lying to you a single time? A single time? No. Mr. Searcey says I couldn't do it. Do you know why? If you tell the truth, nobody's ever going to catch you lying. It's impossible, because you're [1433] not. And he told you the truth.

Now, all I can ask is that you -- I know I get carried away, I go on and on and on, I almost have a heart attack when somebody shoots me with a rubber band in the middle of a trial, that was bad, but we joke around and everything, but this isn't a case where you have a burden that's not something that can be handled.

Besides feeling bad, you can feel good today. You can feel mighty good today. Who would it possibly help for Jack Alderman to get a death penalty? What possible purpose would that serve? Is there any purpose in the world that that would serve?

Ten years on Death Row. What good would that do? Nothing. It could do nothing except bother you, bother him, end his life. The Judge is going to tell you the law in a minute. I'm going to quit, because I get all carried away here and I don't want to put that on you all.

I do appreciate your consideration and your time and I ask one thing, that you all go back there and realize what we're dealing with. We're not dealing with somebody charge with burglary, somebody that's gonna go to jail for five years; we're talking about life and death.

Nine old men in Washington, D.C. in 1972, after eight or nine years, decided it's all right to have death penalties again. That's who figured that out. Everybody jumps on the band [1434] wagon in some states. Some states, there aren't any

death penalties. Most countries, there aren't any death penalties.

But the death penalty is the final penalty. There's nothing else. What happens in ten years if Jack Alderman is executed and John Brown flips out and decides to tell the way it really happened? What are you all gonna do? What am I gonna do? What's the D.A. gonna do? Well, sorry about that.

It can't happen. That's why we've got you all, because you don't work for the D.A.'s office, because you can hear, you can seek, you can feel, you can understand, you can listen, and you've heard it, a whole week of it, and you've been locked up and uncomfortable and I'm very sorry for that, but I don't write the laws and I don't decide these things.

And none of us were back there ten years ago except for one man in this whole courtroom, and I just ask you to give him every consideration and just think about what the death penalty is, and I ask you to return a verdict for life. Thank you.

THE COURT: Members of the Jury, first I want to be sure that each of you can hear me. Can you? If you cannot, raise your hand and I will adjust the volume control.

* * *

[1435] The State has that same burden of proof in proving the aggravating circumstances -- or aggravated circumstances, upon which the State relies in seeking the death penalty against the defendant in this trial.

* * *

Members of the Jury, it is now your responsibility to determine, within the limits prescribed by law, the penalty that shall be imposed for the offense of murder, of which the

defendant has been found guilty previously. In arriving at your verdict as to punishment, you are authorized to consider all of the evidence received by you in this trial.

Even though you are not to determine the guilt or innocence of the defendant, as that has been determined by a previous jury, you may consider the evidence presented in this trial that goes to the question of guilt or innocence.

You are authorized to consider all of the facts and circumstances of the case.

Under the law of this State, every person found guilty of murder shall be punished by death or by imprisonment for life. In all cases for which the death penalty may be authorized, the law provides that the Judge shall instruct the jury concerning [1444] mitigating circumstances or aggravating circumstances, which the jury should consider in making decisions, which will determine the punishment to be imposed for each offense.

In arriving at your determination as to the sentence, you are authorized to consider all of the testimony and evidence presented to you by the State and by the Defense. You are authorized to include in your consideration the facts and circumstances if any, in mitigation and in aggravation.

Mitigating circumstances are those which do not constitute a justification or excuse for the offense of murder, but which in fairness and mercy may be considered as extenuating or reducing the degree of moral culpability so as to justify a sentence of life imprisonment rather than a sentence of death.

Aggravating circumstances are those which increase the guilt or enormity of the offense or add to its injurious consequences. A finding of aggravating circumstances in no way justifies an automatic imposition of the penalty of death by electrocution.

Regardless of the presence or absence of aggravating circumstances, the jury has both the right and the authority to recommend mercy, which would require the Judge to impose a sentence of imprisonment for life.

The law provides that where, upon a trial by jury, a person is convicted of an offense which may be punishable by death, a sentence of death shall not be imposed unless the jury [1445] verdict as to sentence includes a finding of at least one statutory aggravating circumstance and a recommendation that a death sentence should be imposed.

Where a statutory aggravating circumstance is found and a recommendation of death is made, the Court shall sentence the defendant to death. Where a sentence of death is not recommended by the jury, the Court shall sentence the defendant to life imprisonment.

Now, Members of the Jury, I Charge you that the State contends that the offense of murder was committed under the following aggravating circumstances:

Number 1: "The defendant committed the offense of murder for himself or another for the purpose of receiving money or any other thing of monetary value."

The State has the burden of proving this statutory aggravating circumstance beyond a reasonable doubt. You should look to the evidence before you and determine whether or not the murder for which defendant has been convicted was committed by the defendant for himself or another for the purpose of receiving money or any other thing of monetary value.

Should you be convinced beyond a reasonable doubt of the existence of this statutory aggravating circumstance, then your verdict should reflect this finding. If you find that this

aggravating circumstance does not exist, or if you have a reasonable doubt of its existence, you should disregard it.

[1446] The State also contends that the offense of murder in this case was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind, or aggravated battery to the victim.

The State has the burden of proving this statutory aggravating circumstance beyond a reasonable doubt. In this regard, the State must prove to your satisfaction and beyond a reasonable doubt, first, that the offense of murder was outrageously or wantonly vile, horrible, or inhuman and, second, that it involved at least one of the following: torture or depravity of mind or an aggravated battery to the victim.

I Charge you that an aggravated battery occurs when a person maliciously causes bodily harm to another by depriving her of a member of her body, by rendering a member of her body useless, or by seriously disfiguring her body or a member thereof.

In order to find that the offense of murder involved an aggravated battery, you must find that the bodily harm to the victim occurred before death.

I Charge you that torture occurs when a living person is subjected to the unnecessary and wanton infliction of severe physical or mental pain, agony, or anguish.

I Charge you, however, that you would not be authorized to find that the offense of murder involved torture simply because the victim suffered pain or briefly anticipated the prospect of death, nor should acts committed upon the body of a deceased [1447] victim support a finding of torture.

In order to find that the offense of murder involved torture, you must find that the defendant intentionally, unnecessarily, and wantonly inflicted severe physical or mental pain, agony, or anguish upon a living victim.

I Charge you that depravity of mind is a reflection of an utterly corrupt, perverted, or immoral state of mind. In determining whether or not the offense of murder in this case involved depravity of mind on the part of the defendant, you may consider the age and physical characteristics of the victim and you may consider the actions of the defendant prior to and after the commission of the murder.

In order to find that the offense of murder involved depravity of mind, you must find that the defendant, as a result of his utter corruption, perversion, or immorality, committed aggravated battery or torture upon a living person.

I Charge you that you would not be authorized to return a finding of this statutory aggravating circumstance unless you are convinced beyond a reasonable doubt, not only that the murder involved torture or depravity of mind or an aggravated battery to the victim, but that the murder was also outrageously or wantonly vile, horrible, and inhuman.

APPENDIX Q

[1] IN THE SUPERIOR COURT OF BUTTS COUNTY
STATE OF GEORGIA

JACK E. ALDERMAN, Petitioner

vs.

TONY TURPIN, Warden, Respondent

CIVIL ACTION FILE NO. 94V--720

Proceedings heard before the Honorable JOHNNIE L. CALDWELL, JR., Judge, Griffin Judicial Circuit, commencing on the 5th day of May 1999.

APPEARANCE OF COUNSEL

For the Petitioner: THOMAS DUNN, Esq.

TERRI PIAZZIA, Esq.

For the Respondent: ALLISON GOLDBERG, Esq.

SUSAN BOLEYN, Esq.

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EVIDENTIARY HEARING

* * *

[28] RICHARD WISE

was called as a witness, and having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DUNN:

Q Good morning, Father. How are you?

A Good morning. Fine, thank you.

Q Would you state your full name for the record.

A Father Richard Paul Wise.

Q And where do you currently reside, Father Wise?

A Saint Peter and Paul Catholic Church in Decatur, Georgia.

Q How long have you been at Saint Peter and Paul in Decatur, Father?

A Just about 12 years.

Q And prior to going to Saint Peter and Paul where were you at that -- prior to that, Father?

A I've had a number of assignments in the archdiocese. But I was in Stone Mountain for a year; and was

in Jonesboro; Saint Oliver Plunkett Parrish out of Gwinnett County; Conyers, Georgia.

Q Was there a time, Father, in your work here in Georgia that you were the chaplain at the Georgia Diagnostic and Classification Center?

A Yes. I was here for six years.

[29] Q And when was that, Father?

A I was here from 1980 through 1986.

Q And, Father, could you just briefly tell the Court what your educational background is.

A I have a bachelor's in theology from Saint Joseph's College in Westville, Indiana. I have a master's from Catholic Theological Union in Chicago.

Q Father, do you know Jack Alderman?

A Yes, I do.

Q And how do you know Jack?

A Jack was on death row when I was chaplain here.

Q Father, I direct your attention back to March of 1983. You in fact testified at Mr. Alderman's resentencing trial; is that correct?

A That's correct.

Q And you did that at the bequest of his attorneys at that time, Mr. Jackson and Mr. Schiavone?

A That's correct, yes.

Q And is it safe to say, Father, that since you testified that you had not had any contact with anyone from Mr. Alderman's legal team until I called you a couple of weeks ago?

A That's correct.

Q And do you recall that phone call that I made to you, Father?

A Yes, I do.

[30] Q During that phone call I identified myself and indicated to you that I represented Mr. Alderman. And when I said his name you said something in response to me. Do you remember what that was?

A I said Jack is an amazing man.

Q And you said that without any prompting from me?

A That's right.

Q That was your spontaneous reaction?

A That's right.

Q Why did you say that, Father?

A Jack always impressed me. I got to know a number of fellows there at D-house when I was there. And Jack was probably the most positively influential person that I knew back there.

I respected Jack's wisdom. I respected his insight into things. I respected his religious commitment, his -- He always had a strong desire to learn more. He wasn't satisfied with easy answers.

And I was very pleased with his ability to contextualize things. Nothing seemed to get out of hand for him, it was all very contextualized. He always saw the bigger picture.

Q And those are the kind of things that made you respond to my inquiry of Mr. Alderman?

A That's right. Yeah.

[31] Q Now, when you testified in 1983 you did not testify to these types of things; is that correct?

A That's correct.

Q And in fact, Father, you indicated to me that after you did testify at the 1983 resentencing as you were getting up from the stand --

MS. GOLDBERG: Your Honor, I have to object at this time, this is his witness and he's leading him.

THE COURT: Don't lead your witness, please, sir.

MR. DUNN: I'm trying not to lead my witnesses, Your Honor.

THE COURT: Okay. Well, try not to. Don't do it.

BY MR. DUNN:

Q Father, do you recall what ran through your mind when you got off the witness stand at the 1983 resentencing trial?

A I was very disappointed. I mean I got about I think 90 seconds of testimony. And I didn't get a chance to say what I wanted to say.

Q And in fact, Father, I think you indicated to me that at that --

MS. GOLDBERG: Objection. He's leading, Your Honor.

MR. DUNN: Do you recall --

THE COURT: Don't lead him.

BY MR. DUNN:

[32] Q Do you recall whether you felt that you let Mr. Alderman down at that time?

A I did, because I didn't get to say what I wanted to say. It was frustrating. I felt like I had got there to give testimony and it was -- I wasn't allowed to say what I wanted to say.

Q You weren't asked the questions?

A That's right.

Q You've indicated that you were impressed with Mr. Alderman's spirituality. Could you tell the Court about that, Father.

A Well, I celebrated mass in the barber shop back then at the time. And that was kind of a difficult time because the Catholic mass was just getting started back on death row. And there was some problems about Catholics bringing the sacraments into death row.

There were times when I would celebrate mass and people would come by and bang on the windows and would basically cause a lot of noise and some harassment.

I was very pleased with the response that Jack could give. He focused on what we were doing as we celebrated the mass. I was impressed too when -- Because of limited space often times I had to rotate between the Catholic inmates that wanted to come out.

I knew it was disappointing to the guys who could not [33] come out, especially Jack because of his commitment. And I was pleased that he handled that well. And I think a lot of it came from his -- his deep inner spiritual strength that he had, and I assume he still has.

Q From your perspective, Father, did you believe that Mr. Alderman's spirituality was sincere?

A Oh, most definitely. I was a chaplain for 11 years, worked at Audi Home in Chicago and worked at a juvenile detention facility in Cleveland, and Arising Group Homes in Ohio, worked with emotionally disturbed children in Chicago, DeKalb County -- I'm sorry, Conneaut County jail, a lot of different places. And I saw a lot of jailhouse religion; you know, give me a chaplain, get me a carton of cigarettes and a

Bible and tell the judge I've changed. And that's not what I experienced with Jack. I experienced a very deep religious conversion experience.

Q You saw people on death row on Wednesday; is that correct?

A That's right.

Q And do you ever recall Mr. Alderman talking to you about how important those Wednesday visits were with you?

A Oh, yeah; most definitely. I think that was something that Jack and the other guys really looked forward to. I looked forward to it. That -- It was a real spiritual boost for me.

[32] At that time I was serving on the Priest Council for the archdiocese of Atlanta. And I would sit with the archbishop and some of the other priests making decisions about the church, Catholic church, in north Georgia.

And quite frankly I would long to be here because this had more spiritual context than some of the things we did in council. So yeah. And that was pretty evident that he was very committed spiritually.

Q What type of role, if any, did Mr. Alderman have from sort of a leadership role on death row from your perspective, Father?

A There were times when guys would come out for mass and they would be upset about something. At one time there was what we jokingly referred to as the holy wars on death row because there were the Protestants versus the

Catholics and anybody else. And it was a lot of religious tension that took place back there.

And Jack had a wonderful way of diffusing that stuff. And he contextualized it with a lot of humor. And I think he kept the lid on a lot of things. Of course, religion really wasn't the issue; that was just the frustration of life back there, religion happened to be the battleground.

But I saw Jack diffuse situations and put people in a completely different mood by the time they were out of his presence.

[35] Q What kind of role, if any, or interaction, if any, did you see between Mr. Alderman and the correctional staff here at the Georgia Diagnostic and Classification Center?

A Jack was always very polite. He was very deferring. He knew how the system worked, and he willingly participated in the system. He was not at all un -- I don't know how to say it -- he wasn't without forethought. He knew that he had to make decisions about how he was going to live successfully.

Q Did he ever talk to you about how hard it was to live on death row?

A Probably no more than a lot of the other guys. And Jack's a very -- He's an amazing man. He could put up with things that a lot of other folks couldn't put up with, again because I think he saw the bigger picture.

Q There came a point in time when Mr. Alderman in this period actually left death row; is that correct?

A There was a period of time when part of death row was being painted; and so Jack and a few other guys who were more of the, if you will, the trustee guys were sent to C-house I think it was. I can't remember for sure what the letter was.

But Jack -- It gave me more access to Jack, quite frankly, and some of the other guys. I actually celebrated mass in the cell rather than, you know, outside the area. And so there was a lot of -- I don't know how to say it -- unsupervised contact, if you will. It was less security there [36] than there was on death row. And not once did I feel any kind of danger or anything like that from Jack.

Q Did Mr. Alderman seem protective of you during that time --

A Oh, definitely.

Q -- in the general housing population?

A Definitely. I knew that when Jack was around things were going to be all right because Jack was very responsible for my safety.

When I first came Jack and one or two other guys gave me a bit of orientation. They told me how things operate here and these are the things you don't want to do. And between Jack and Mike Berryhill and a couple of other guys I knew that I was watched after.

Q There came a point in time, Father, when you actually baptized Mr. Alderman; is that correct?

A That's right. That's right.

Q And he had not been raised Catholic; correct?

A Correct.

Q Do you recall what he was -- what religion he was raised under?

A I'm sorry, I don't recall what denomination he was before.

MR. DUNN: Your Honor, at this time I have several claims that I'm presenting evidence on. Up to this point

* * *

TERRY JACKSON

was called as a witness, and having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DUNN:

Q Please state your full name for the record.

A George Terry Jackson.

Q And state the city and state that you currently reside in.

A Savannah, Georgia.

Q What is your occupation, Mr. Jackson?

A Attorney.

[97] Q And how long have you been an attorney?

A Since 1971.

Q Do you know this man sitting here? (Pointing.)

A Yep. That's Jack Alderman.

Q And how do you know Mr. Alderman?

A I represented him for a number of years.

Q Do you recall when you first represented Mr. Alderman?

A I've got some notes here if I could look -- I was appointed May 6th, 1983.

Q And at that point in time what was -- what posture was Mr. Alderman's case in?

A His case had been reversed by the federal courts and was sent back to Chatham County for resentencing. And Judge Cheatham appointed me to represent him on the resentencing.

Q Okay. And did you have co-counsel at that time?

A Not at that time.

Q Did you ask to get co-counsel?

A Later on I asked that my associate, Michael Schiavone, be appointed to assist me.

Q Was he so appointed?

A He was.

Q Can you tell us what the division of labor was in preparation for Mr. Alderman's resentencing?

A I did most of the major witnesses concentrating on [98] guilt/innocence. And he was to do the evidence in mitigation.

Q Okay.

A At my direction, he was my associate. He also did some of the minor witnesses in the guilt/innocence -- as to guilt/innocence.

* * *

[100] Q Can you tell us what your theory of defense was at Mr. Alderman's resentencing trial?

A That he's not guilty of the crime of murder that he was charged and convicted of.

* * *

MURPHY DAVIS

was called as a witness, and having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

[74] BY MR. DUNN:

Q Would you state your full name for the record.

A My name is Martha Murphy Davis.

Q And what city and state do you currently reside in?

A Atlanta.

Q And --

THE COURT: Did you say Atlanta, please, ma'am?

THE WITNESS: Atlanta, Georgia; that's right.

BY MR. DUNN:

Q Okay. And could you state your current occupation, please.

A I'm a Presbyterian pastor. I'm the director of Southern Prison Ministry in Georgia. And I'm a part of the Open Door Community Presbyterian Church.

Q What is the Open Door Community?

A The Open Door is a Presbyterian mission. We work with homeless people and people in prison in Georgia.

Q Do you know Jack Alderman?

A I do.

Q And how do you know Jack?

A I met Jack visiting at Reidsville in the fall of 1979. And I've known him through these 22 years now.

Q And how did it come that you met Mr. Alderman? He was in prison; is that correct?

A That's right. He had been sentenced to death, I [75] think, a couple of years earlier and had been at Reidsville I think maybe for some months at the time that I met him. I was working with people on death row and met Jack in the course of my visiting at Reidsville.

Q And after meeting Jack did you develop a relationship with Jack?

A Yes.

Q What kind of relationship was that?

A Well, a pastoral relationship. I got to know him as he lived there at Reidsville and then, I believe, was moved to Jackson in -- must have been the summer of 1980. Then there was a time that he was back in Savannah during his retrial; I think probably '83, '84. And then he came back to Jackson at some point after that. I've known him through all of those years.

Q Okay. I want to direct your attention to the period of time that you first met Mr. Alderman and the time of his resentencing in 1984. How often -- What kind of frequency of contact would you have with Mr. Alderman during that time?

A It's very hard to say except to say it was regular. I didn't keep careful records of my visits. But I generally in those years came to the prison about once a week. And I would see Jack probably sometimes once a month, others every other month; but on a pretty regular basis.

Q And have you gotten to know Mr. Alderman fairly [76] well?

A Yes, I did.

Q How you would describe Jack Alderman?

A Jack has always been a person who has stood out in many ways. I've known people on the row who have had all different kinds of life experience and different kinds of emotional responses to their life experience.

And Jack has stood out in many, many ways; both in his relationships with other prisoners; prison staff, I think as witnessed by the number of prison staff who were willing to testify in his retrial and did testify; but his relationships with his friends outside of prison; his family; his attorneys; his capacity through all of that, through all that he's been through, which has been a real legal and emotional roller coaster, to maintain a sense of focus and an amazing level of discipline.

I think discipline is one of the real hallmarks that I would cite, both physically he has -- he has kept a real focus on exercise and keeping himself physically fit in a context where that's a very difficult thing to do or to want to do; but also spiritually; intellectually.

He reads very widely. He has, of course, found a real home in the Catholic church and has found in the practice of his faith a way to sort of order his own life and order his days so that he understands how to -- how to structure his life [77] around his faith commitment. It's very impressive.

Q How would you describe his spirituality?

A Deep, mature, focussed. He's a very centered person. His spirituality has been such a warm and deep expression in his own life that he has -- it's kind of spilled out to be a resource for other prisoners and for prison staff.

I don't think there's anybody who has lived around Jack Alderman who doesn't know who he is and what his commitments are.

Q Based on your observations and knowledge of Mr. Alderman describe for the Court what you mean by his relationship -- the pouring out and his relationship with other inmates.

A Well, Jack's been here a long time.

MS. GOLDBERG: Your Honor, I'd just like to be sure that this witness's confining herself to the period before 1984, before this retrial. Anything that's happened since then is really irrelevant.

THE COURT: I think that would be correct.

MR. DUNN: I'll instruct the witness, Your Honor.

THE COURT: Okay.

BY MR. DUNN:

Q Ms. Davis, please confine your comments to observations and knowledge that you had up to 1984, March, during the time of Mr. Alderman's resentencing.

[78] A Okay. And forgive me, it's a little bit hard to think in those terms.

Q It is.

A I've known him for 20 years so, you know, what happened before '84 and, you know, what happened afterwards I can't be entirely sure. But I'll do my best to do that.

As Jack has lived on death row and sort of figured out how to remain human and disciplined and focussed in his life he has been in many instances a mentor to other people; and particularly younger guys coming into prison for the first time or coming on to death row for the first time not knowing how to handle themselves; having, you know, the impulse to act quickly and without thinking.

And I've seen on so many occasions Jack sort of take somebody under his wing and help them sort of, you know, learn how to live in that very difficult context without brutalizing each other. And that's been a tough thing to do.

I think it's been really remarkable to see the number of times that that's recognized by prison staff, that they understand that his way of life in the cell block is a sort of peace-making force; but that he has -- his own cultivation of his own spirituality has helped him to be a sort of teacher, both intentionally and just as a spill over at points, with other folks to say that you can live here and not be entirely brutalized and dehumanized by the environment or also without [79] brutalizing and dehumanizing others. And that's an important witness.

Q During this time period of 1979 to 1984 you saw Mr. Alderman interact with correctional staff here at the prison; is that correct?

A Yes.

Q Describe what you saw and what you know of Mr. Alderman's interaction with prison staff during that period.

A And, of course, there are limitations to that. I go as far as the visiting rooms so I --

Q Right.

A -- see the prison staff who come through and come up to the visitation room. But I think I could say without any question across the years, certainly up to '84, 1979 to '84, both at Reidsville and at Jackson, that he was always cordial and polite.

He's a quiet and mild-mannered man, and that there seemed to be always an air of respect between him and prison staff.

And, you know, I'm very aware that many prison guards who knew him in A-house, in C-house, in D-house, and in H-house -- and I don't remember when all those changes came, when he was where, but that he knew counselors, guards, pastors, wardens. I never knew anybody to have a hard word to say about Jack.

[80] Q You indicated that Jack is an intellectual man?

A Unh-unh (affirmative).

Q What do you mean by that?

A He reads very widely. He corresponds with large numbers of people. I think it's one of the ways --

MS. GOLDBERG: Your Honor, again if she could confine her testimony to the period before 1984.

THE COURT: Okay.

THE WITNESS: Okay. He read to 1984. From 1979 to 1984 I knew him as a person who read widely, who

corresponded with a number of people around the world. And through that activity, you know, he's kept his mind alive.

He's kept an active involvement in life beyond his immediate circumstances. He pays attention to the news. He thinks deeply about what happens. He's always very interesting to talk to because he's aware of what's going on, and that's been true through all the years that I've known him.

BY MR. DUNN:

Q Do you know whether or not during this period that Jack Alderman wrote poetry?

A Yes. Yes, he did. In fact I knew his poetry before I knew him. He published poetry in the Georgia State Prison News, I think is the name of the newspaper or was in those [81] years.

And so I had seen some of his poetry actually before I met him; and knew his poetry, you know, for a good many years. He did a lot of writing, especially in the early years.

Q Do you know Mr. Alderman's family?

A I have never met his father personally. And I never met his mother before her death.

Q Has he talked about them?

A Oh, yes.

Q During the period of time, again 1979 to 1984, can you describe for the Court the kinds of relationship that Mr. Alderman had with his family.

MS. GOLDBERG: I object as to relevance and as to what her basis of knowledge is for this.

THE COURT: Okay. Well, if you can lay a foundation of how she knows it I'll let you ask her.

BY MR. DUNN:

Q Did Mr. Alderman talk to you about his relationship with his father and mother?

A Probably every time we visited. He, I think in many ways, hurt more for them then he did for himself.

Q What do you mean by that?

A Well, he was aware of what this whole situation had done to their lives, that to be accused of this crime and judged guilty of this crime was devastating for them, for him [82] then to be sentenced to death was further devastation, to lose Barbara in the first place and then to lose him in this way was -- well, what can you say. It was just -- It was devastating.

He grieved -- I know a story I heard Jack tell again and again and again in those early years especially was some very -- I don't know, it was a true detective magazine or something, one of these sort of National Inquirer type magazines that ran something on his case; and he described his mother, you know, trying to get all of the copies that she could to get it out of sight; you know, just his experience of her pain that was much deeper than anything he felt for himself.

It was always a clear mark that he had such a capacity to understand beyond himself, to care for the people who loved him and who were his support and his life.

Q You're aware that Mr. Alderman's capital resentencing trial was in March of 1984; is that correct?

A Yes.

Q In fact you were served a subpoena; is that correct?

A That's correct.

Q By Mr. Alderman's attorneys, Mr. Schiavone and Mr. Jackson?

A That's right.

Q Did you testify at that trial?

A I did not.

[83] Q Had you been asked to testify would you have testified on Mr. Alderman's behalf?

A I was ready to go.

Q And had you testified in 1984 would you have testified to the things that you have testified to here today?

A Yes. I did notice, however, though -- I looked at that subpoena this morning, and it's made out to Murphy Sims. It's addressed correctly, but it's made out incorrectly so --

Q Were you ever Murphy Sims?

A No, I wasn't. Not that I recall.

Q But you did get the subpoena?

A Yes.

Q Okay. Had you been asked to testify in 1984 would you have asked Mr. Alderman's capital jury to have mercy upon him?

MS. GOLDBERG: Objection, Your Honor.

THE WITNESS: Absolutely.

THE COURT: I'll sustain that.

MR. DUNN: Can I proffer her answer, Your Honor?

THE COURT: When you get through. Go ahead.

MR. DUNN: If I could have a moment to confer.

THE COURT: Okay.

(Whereupon, a discussion was held at petitioner's table.)

BY MR. DUNN:

Q Did you have conversations with either of Mr. [84] Alderman's attorneys prior to the resentencing?

A Yes, I did.

Q Do you recall who you talked to?

A I think primary -- I think I talked with Terry Jackson, I'm not positive. I'm very clear that I talked with Michael Greg Schiavone.

Q And you talked to them about testifying --

A Right.

Q -- at the resentencing trial?

A That's right.

Q And do you recall what, if any, kind of questions they asked you concerning that testimony?

A I don't recall specific questions. You know, I think they seemed to be making a list of people who knew Jack. But I don't recall content.

Q Were they asking you about people who knew Jack, if you recall?

A That I do not remember.

* * *

[ID Jackson's testimony]

BY MR. DUNN:

Q There were several witnesses who testified at the 1975 trial that you attempted to locate to testify at Mr. Alderman's resentencing. I'd specifically draw your attention to Ruth Smith.

A You've got me. I don't -- There were a number of witnesses -- I don't remember her name, but I remember that there were a number of witnesses we tried to find. Yes, sir.

Q You had to read some witnesses' testimony into the record; is that correct?

A Yes, we did. They were -- We could not find them.

Q Because you could not locate them?

A Yes, sir.

Q Death?

[149] A Yes.

Q Or illness?

A That's correct.

Q And you did state those reasons on the record before they were read into the record; is that correct?

A I believe we did. Yes.

Q In fact two of those witnesses were aunts of Mr. Alderman, Mrs. Smith and Mrs. Perkins?

A I don't recall. I'm sorry.

Q Mr. Jackson, you testified that your theory of defense at resentencing was that Mr. Alderman was not responsible for his wife's death; is that correct?

A That's correct.

Q Did you -- In addition to that you presented other witnesses --

A Yes.

Q -- that did not deal with the crime itself; correct?

A That's correct.

Q What was your purpose in presenting those witnesses?

A We were trying to show what kind of person Jack Alderman was, that he was well respected in the community and trusted.

Q And in fact you called a number of witnesses to do that; correct?

A That's true.

[150] Q Witnesses that had known Mr. Alderman prior to the crime?

A Yes, sir.

Q And witnesses who knew Mr. Alderman after the crime?

A That's correct.

Q Those witnesses that you called you asked them as --character evidence type questions; correct?

A That's correct.

Q Opinion questions concerning Mr. Alderman's character?

A That's correct.

Q Did you have a tactical or strategic reason not to ask those witnesses broader information about Mr. Alderman's life? background? experiences?

A No, sir.

Q You've had an opportunity to review some affidavits that I have shown you this past week?

A That's correct.

Q The affidavit -- excuse me, the affidavit of Mr. Alderman's father?

A That's correct.

Q Mr. Wayne Beasley?

A Yes.

Q Mrs. Janice McCoy, a juror in this case?

A That's correct.

[151] Q Mrs. Gloria Ann Miles, another juror in this case?

A Yes.

Q Larry Stapleton?

A Yes.

Q Catherine Thompson?

A Yes.

Q And an affidavit from Mr. Alderman's sister, Teresa; is that correct?

A Yes.

Q Did you have any tactical or strategic reason for not presenting that type of evidence at Mr. Alderman's resentencing trial?

A No, sir.

Q Would that type of evidence had been inconsistent or contrary to your --

* * *

BY MR. DUNN:

Q Mr. Jackson, do you recall if you ever spoke with Mr. Alderman's sister regarding her potential testimony at Mr. Alderman's resentencing trial?

A I don't recall. I don't believe I did.

Q And did you have a tactical or strategic reason for doing that?

A No, sir.

Q Do you know if you ever spoke with Mrs. Catherine Thompson, Mr. Alderman's ex-wife, about testifying at the 1984 resentencing?

A I don't believe I did.

Q And do you recall that she in fact testified at the original trial?

A I believe she did. But I -- I can't swear to that.

Q And, sir, did you have a tactical or strategic reason for not talking with Mrs. Thompson?

A No, sir.

Q Mr. Alderman's father testified at the resentencing; is that correct?

A That's correct.

Q And, Mr. Jackson, do you know if you had a tactical or strategic reason not to ask Mr. Alderman's father whether he [161] wished the jury to express mercy on behalf of his son?

A I had no such reason.

Q Concerning Mr. Beasley, who testified at Mr. Alderman's capital resentencing in 1984, did you have any tactical or strategic reason not to ask him whether he would ask the jury to have mercy on his friend, Jack Alderman?

A I had no such reason.

Q Father Richard Wise, who testified on behalf of Mr. Alderman, did you have any reason -- any tactical or strategic reason not to ask him information concerning his relationship with Mr. Alderman above and beyond the character type opinions that you got from him?

A I had no such reason.

Q Mr. Jackson, you testified previously that you had the assistance of two investigators; is that correct?

A Yes, sir.

Q I believe they were both former law enforcement officers; is that correct?

A They were retired F.B.I. agents. They have a network. I think they called on some colleagues from different localities to help. I believe there was one or two other agents that they called on to do certain tasks in this case.

Q And in addition to those investigators did you have a mitigation specialist appointed to assist you in this case?

A No, sir.

[162] Q I assume that any mitigation type investigation then that was done was done by the two investigators, former F.B.I. agents?

A Either them or Mr. Schiavone or myself.

Q And if those investigators' notes indicate that their interviews of these witnesses dealt with strictly character opinion evidence then that would have been the extent of the conversations with them; is that correct?

A That's correct.

Q Mr. Jackson, let me ask you if information concerning the traumatic injury that Mr. Alderman received to his left eye at the age of four years old would that evidence have been inconsistent with your theory that Mr. Alderman did not commit this crime?

A It would not be inconsistent.

Q Would evidence that after spending three months in the hospital recovering from that traumatic injury that the day

that he was released from the hospital he was violently attacked and stabbed in that eye again --

MS. GOLDBERG: Objection, Your Honor, there's been no evidence about --

THE COURT: Sustained.

MS. GOLDBERG: -- this.

MR. DUNN: Your Honor, I'd proffer evidence concerning that.

[163] THE COURT: All right. Go ahead, ask him something else.

MR. DUNN: I take exception to not being able to ask that question, Your Honor.

THE COURT: I note the exception. The record will so state it.

MR. DUNN: For the record, Your Honor, under this claim I have the burden of showing that Mr. Jackson did not have a tactical or strategic reason not to present this evidence and the Court's ruling is preventing me from doing that.

THE COURT: No, sir. I'm preventing you from asking something that's not in evidence. I'm not stopping you from asking anything that's in evidence. That is not in evidence, sir. That's just a -- at this point a statement by you. If you have something to put that in evidence I'll let you ask him about it.

MR. DUNN: I have a sworn affidavit submitted pursuant to the habeas corpus rules set forth in the Georgia general statute from Mr. Alderman's father, Jack L. Alderman.

THE COURT: Overruled. Ask him something else, please.

BY MR. DUNN:

Q Mr. Jackson, do you know that if you or any of your [164] investigators ever spoke to any of Mr. Alderman's teachers in preparation for this sentencing -- the resentencing trial?

A I can't recall. I don't recall talking to any of his teachers.

Q And if the records do not indicate any notes concerning that then you had not done that; is that correct?

A That's correct. It would have been in my file, and you both have had my file.

Q And would you have had any tactical or strategic reason not to do that?

A I would not.

Q Sir, I'm going to hand you what's been marked as Plaintiff's Exhibit Number 57 and ask you to just briefly review those documents.

A (Complying with request.) Yes, sir.

Q Have you ever seen those documents before, sir?

A I have not.

Q And those purport to be hospital records for Jack Edward Alderman; is that correct?

A That's correct.

Q From Memorial Medical Center in Savannah, Georgia?

A That's correct.

Q Did you have any tactical or strategic reasons not to obtain those records?

A I did not.

[165] MR. DUNN: Your Honor, I would tender Plaintiff's Exhibit Number 57 at this time.

THE COURT: Any objection?

MS. GOLDBERG: Other than to relevance, no, Your Honor.

THE COURT: They're admitted.

BY MR. DUNN:

Q Sir, did you have any tactical or strategic reason not to present evidence that the day following Mr. Alderman's discharge, after spending three months in the hospital with an injured eye that he was stabbed in that same eye --

MS. GOLDBERG: Objection, Your Honor --

MR. DUNN: -- that day?

MS. GOLDBERG: -- this is not in evidence.

MR. DUNN: It's now in evidence, Your Honor.

THE COURT: Where is it in evidence?

MR. DUNN: The medical records.

THE COURT: Well, show it in the record then, that's what -- if it's in evidence, fine; let's see where it is.

THE WITNESS: Yeah, I see it. It's in the report.

BY MR. DUNN:

Q Did you have any tactical or strategic reason not to present that?

THE COURT: Where in the record is it, just so this lady can find it?

[166] MR. DUNN: Judge, I will read it into the record.

THE COURT: No, sir.

MR. DUNN: It --

THE COURT: Just tell the lady.

MR. DUNN: -- is dated five --

THE COURT: Mr. Dunn. Mr. Dunn.

MR. DUNN: Yes, Your Honor.

THE COURT: Just tell the lady where it is so she can turn to it.

THE WITNESS: It's history.

MR. DUNN: (Pointing.)

THE COURT: Okay. Ask him the question.

BY MR. DUNN:

Q Sir --

A Yes.

Q -- did you have any tactical or strategic reason for not presenting evidence that after Mr. Alderman's eye had been injured at age four, having spent three months in the hospital, that the day following his discharge he was stuck in the eye with a hacksaw blade by another boy? Did you have any tactical or strategic reasons not to present that evidence?

A I had no such reason.

MR. DUNN: Handing respondent what's been marked as Plaintiff's Exhibit Number 58.

THE WITNESS: Yes, sir.

[167] BY MR. DUNN:

Q Have you had a chance to review those records?

A I've never seen them before.

Q And they purport to be records concerning Jack Edward Alderman; is that correct?

A Yes, sir. School records. Yes, sir.

Q School records from the Georgia Academy for the Blind; is that correct?

A That's correct, Your Honor.

Q And, sir, did you have any tactical or strategic reasons not to obtain those records?

A I had no such reason.

MR. DUNN: I would tender them at this point, Your Honor.

THE COURT: Any objection?

MS. GOLDBERG: Just to relevance, Your Honor.

THE COURT: They're admitted.

MR. DUNN: Handing the respondent what's been marked as Plaintiff's Exhibit Number 59.

THE WITNESS: Yes, sir.

BY MR. DUNN:

Q And have you seen those records before, sir?

A Never seen them before.

Q Those purport to be school records for Jack Edward Alderman; is that correct?

[168] A That's correct.

Q Sir, did you have any tactical or strategic reasons not to obtain those records?

A I had no such reason.

Q As to all three sets of these records, medical records, the educational records from the Georgia School of the blind, and the educational records from Savannah High School, did you have any tactical or strategic reason not to present this evidence to the jury in Mr. Alderman's capital resentencing trial?

A I had no such reason.

Q And would the information contained in those documents have been inconsistent in any way with your theory at Mr. Alderman's resentencing trial?

A They would not be inconsistent.

MR. DUNN: Your Honor, I'm showing the respondent what has been marked as Petitioner's Exhibit Number 71. I apologize, I don't have an extra copy of that, Your Honor.

THE COURT: Okay.

BY MR. DUNN:

Q Sir, I'm going to show you what has been marked Petitioner's Exhibit Number 71.

A Yes, sir.

Q Do you recognize that document?

A Yes, sir. It's a divorce decree between Mary and [169] Jack Alderman dated 1954.

Q Have you ever seen that document before, sir?

A I don't believe I have.

Q And that purports to be a divorce decree between Mr. Alderman's mother and father; is that correct?

A That's correct.

Q And did you have any tactical or strategic reason not to obtain those records?

A I had no such reason.

Q Did you have any tactical or strategic reason not to present that information to Mr. Alderman's jury?

A I had no such reason.

Q And would this information have been inconsistent in any way with your theory of defense at Mr. Alderman's resentencing trial?

A It would not.

Q Sir, do you know if you attempted to locate records concerning custody and placement of Mr. Alderman and his sister, Teresa?

A I don't believe I ever tried to locate such records.

Q And did you ever have a tactical or strategic reason not to do that?

A I had no such reason.

* * *

THE WITNESS: That's marked Alderman investigation notes. And it appears to be -- All those typed pages I was telling you about, it appears to be those typed pages from my investigators as to what all they did to try to locate or interview witnesses. And most of them have a reference to the page number in the prior transcript.

And I believe we copied the transcript and gave a copy of the transcript -- of not the voir dire, but the actual witnesses, to the investigator.

* * *

Q Did Mr. Alderman give you the names of people to contact for his case, to talk with?

A He did. He was at a distinct disadvantage that he had been incarcerated for so long and he had no idea where people were unless they were related to him, and that was a huge disadvantage.

Q Did you make -- Did you or your investigators make attempts to find these people, all these names, that he gave to you?

A Yes. Well, I believe so. There have been names brought out by the petitioner today that I did not contact, and that if those names were given to me then the answer would be no.

Q But as far as your recollection as to the names that Mr. Alderman gave you back then in 1983 did you follow through on those names?

A On all of the fact witnesses, yes.

Q And --

A In other words, people that went to the question of the crime.

[224] Q Is it your understanding that either your investigators or Mr. Schiavone followed up on the non-fact witnesses?

A Some of the non-fact witnesses.

Q What do you mean some of the non-fact witnesses?

A There were -- There were witnesses, for instance his sister, that I've gone back through my file and there is no reference to us having to do -- having tried to make any contact with her.

Now, your question is did we follow up on all the names that Jack gave us. And my answer is we did as to the fact witnesses and I can't remember as to the others. I don't want to say something that's not true.

Q As to your theory of the case could you state it for us again. What was your strategy in the resentencing trial?

A Well, my strategy was that Jack Alderman was innocent and shouldn't have received the death sentence. And I wanted to show the jury a reasonable doubt as to his guilt. I believe that that's -- was the central idea of our defense.

Q Would it be reasonable to say that it was your -- your strategy that if the jurors had some residual doubt as to his guilt they would not impose the death penalty?

A That was part of it. The other part of it was to show that he was a good guy and that this was not a violent person and that he did have a good reputation.

[225] Q And that -- Is it correct to say that that goes along with he couldn't have done this crime? He had a good reputa --

A Well, not that he couldn't have; but that this is not the kind of thing he would do. Yes.

Q Okay. So that also went to your theory?

A Yes.

Q Okay. And you stated that you didn't have a chance to talk with John Brown prior to --

A No.

Q -- the resentencing trial?

A That was refused me.

Q You had -- did you have -- You had a copy of his prior testimony from Mr. Alderman's first trial; right?

A I did.

Q Did you have a copy of his prior testimony from his own trial, from John Brown's trial?

A I had his transcript. I don't -- I think he testified in his own trial, but I can't swear to that.

Q And you cross examined Mr. Brown pretty extensively, didn't you?

A Yes, ma'am.

Q You cross examined him pretty extensively as to his extensive drug use?

A Yes, ma'am.

[226] Q Right? And as to his extensive drug use when he was over in Vietnam; correct?

A Yes, ma'am.

Q And you also cross examined him as to seeing a psychiatrist or psychologist while he was in Vietnam; correct?

A I don't remember. If you could let me see it I -- I don't want to deny it. Yes. Yes.

Q Okay. And you also cross examined him about why he went to see the psychiatrist; correct?

A Yes, ma'am. Unh-unh (affirmative).

Q And he said it was for withdrawals from reality?

A Yes, ma'am.

Q And acute schizophrenia; correct?

A Yes, ma'am.

Q And you cross examined him about what that meant, that it meant that he didn't know what was going on?

A Right.

Q And he didn't have control over himself?

A I believe so.

MS. GOLDBERG: Your Honor, for the record I was directing his attention to the transcript at page 785.

THE COURT: Okay.

BY MS. GOLDBERG:

Q And you cross examined him about his continued drug use after he got back to the United States?

[227] A I did.

Q Correct?

A Yes, ma'am.

Q And about the fact that he'd stole some of his medical records when discharged from Vietnam; correct?

A I did.

Q And that he was supposed to be under a doctor's care when he came back to the states but didn't go; correct?

A I believe that's true.

Q And you talked -- you cross examined him about taking L.S.D., and morphine, opium, marijuana along with the opium; correct?

A Yes, ma'am.

Q And about his drinking?

A Yes, ma'am.

Q What were you trying to do there, cross examining him so extensively about all of this?

A I wanted the jury to see who the murderer was in the courtroom and who could be believed and who had absolutely -- There's no way you could believe the testimony of John Brown based on what he was saying to the jury. He was talking about taking thousands of quaaludes and things like that. So that's what I was trying to do, obviously unsuccessfully.

* * *

Q You testified that you didn't have a mitigation specialist; correct?

A Correct.

Q Did y'all have mitigation specialists in 1984?

A They did in Atlanta. We should have had a mitigation specialist.

Q Did you know anyone in Savannah at the time that had a mitigation -- used a mitigation specialist?

A In Savannah in 1984 I'm not aware of anybody else that was trying death penalty cases.

* * *

REDIRECT EXAMINATION

BY MR. DUNN:

Q Mr. Jackson, did you ever contemplate having a new mental health evaluation done on Mr. Alderman which focused upon mitigation and not the offense itself?

[246] A No.

Q And did you have any tactical or strategic reason not to do that?

A No.

Q Mr. Sullinger, the medical examiner that performed the autopsy in this case, you're familiar that he is not a doctor -- he was not a doctor; is that correct?

A I believe so.

Q Did you ever contemplate challenging his expertise because he was not a physician?

A I don't believe I ever -- If I knew it at the time I don't believe I ever considered that. I think -- As you recall that his testimony was read into the record, his direct and cross examination, by the prior counsel.

Q Correct.

A But I don't believe that I ever contemplated that -- such challenging. Although I did get Dr. Conradi to look at it so she could testify as to what should have been done that wasn't done and what evidence there was absent.

Q Right.

A Especially John Brown's lie about strangling Barbara Alderman.

Q On cross examination Ms. Goldberg asked you about mitigation witnesses that you put on.

A Yes, sir.

[247] MR. DUNN: If I could have Exhibit Number * * 69.

THE COURT: I guess they're right there.

BY MR. DUNN:

Q Sir, do you recall the testimony generally of the guards that were presented?

A Yes, sir.

Q And, again, like the witnesses -- the lay witnesses who had known Mr. Alderman before trial, they testified in the nature of character opinion evidence; is that correct?

A That's correct.

Q Opinion as to truthfulness?

A Yes, sir.

Q Opinion as to being a good inmate?

A Yes.

Q Nothing beyond that?

A I don't believe so.

Q And would you agree with me, Mr. Jackson, that character evidence and mitigation evidence are different concepts?

A Absolutely.

Q And in fact the law treats them differently; is that correct?

A Absolutely.

MR. DUNN: Bear with me, Your Honor. This packet appears to be a little out of order from the one mine is [248] in.

BY MR. DUNN:

Q Sir, I'm going to show you a page here that -- Whose handwriting is that; do you know?

A That is Schiavone's handwriting.

Q Okay. And it lists several witnesses there; is that correct?

A Yes.

Q Dr. Smith, Stanley Waters, Fred Birchell, Carl Moore, Raymond Shores, Wayne Beasley, Willie Farber, and Val Freeman.

A Yes.

Q After Willie Farber and Val Freeman what does that appear to say to you?

A Character witness.

Q And the next page it lists several other witnesses; is that correct?

A That's correct.

Q And it lists them as character witnesses also?

A That's correct.

* * *

MICHAEL SCHIAVONE

was called as a witness, and having been first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DUNN:

Q Would you state your full name for the record, sir.

[251] A Michael Schiavone.

Q And where do you currently reside, sir?

A Savannah, Georgia.

Q And what is your occupation?

A I'm an attorney.

Q And do you know Mr. Alderman?

A Yes, I do.

Q How do you know Mr. Alderman?

A I represented him back in 1984, I believe.

Q And that was at his capital resentencing trial; is that correct?

A That's correct.

Q How long had you been out of law school at that time, sir?

A Four years.

Q And was this the first capital trial you worked on?

A No. It was the second.

Q What was your role in the defense team with regards to your responsibilities in Mr. Alderman's trial?

A I believe I was employed by Mr. Terry Jackson at the time. I did what I was told to do, part of that was in the

representation of Jack, you know. So I was assigned certain duties of part of the trial. I was second chair, and Terry was lead counsel.

Q You were in charge of presenting several -- or [252] numerous witnesses at the resentencing; is that correct?

A That's correct.

Q And those witnesses essentially were character witnesses; is that correct?

A From what I recall. I don't recall a lot of it, but from what I recall they probably were character witnesses.

Q As far as preparation or interview of those witnesses do you know who did that?

A My recollection is that I probably relied on our investigator. I would have spoken to the witnesses before they actually testified. But for the actual interviewing the witnesses and preparing the witnesses, to gather information, I would have relied on the investigators from what I recall.

Q And you would have given them guidance as to what you were looking for?

A I would have told them the kinds of questions and areas I was looking for.

Q And based on your recollection is it -- What kind of guidance did you give them concerning the character witnesses; do you recall?

A I honestly don't recall. I mean I assume I wanted background information about Jack and about his family and

things of that nature. You know, my recollection is that even though it was a resentencing hearing the main thrust of our approach was that -- was to prove Jack's innocence, that they [253] shouldn't put an innocent man to death.

We couldn't get past the fact that he'd already been convicted. But my recollection is that, you know, we pressed hard on the guilt/innocence issue even at sentencing.

Q And in fact you asked the investigators to go out to get character evidence in support of that theory; is that correct?

A Yes. We did.

Q In fact most of the witnesses --

MS. GOLDBERG: Objection, Your Honor, he's leading his witness.

THE COURT: Please don't lead him.

MR. DUNN: If I may have a moment, Your Honor.

THE COURT: Okay.

BY MR. DUNN:

Q Sir, I'm going to hand you what's been previously marked and entered into evidence as Respondent's Exhibits 26 through 33. And I believe that they are form letters that you typed up. If you could just review those quickly.

A (Complying with request.) Okay.

Q And have you had an opportunity to review those?

A Unh-unh (affirmative).

Q What are those documents, sir?

A These are letters sent out to different, I would assume, potential witnesses.

[254] Q Okay. And those were cover letters with attached subpoenas; is that correct?

A That's correct.

Q And what is the date of those letters?

A It appears to be March 19th, 1984.

Q And can you tell from those letters, sir, if you've ever -- if you had spoken to those witnesses at that time?

A I -- Just by the structure of the letter I doubt that I had at that point.

Q And why do you say that, sir?

A Well, I start the letter out with we represent Jack Alderman, as if I'm informing them of that; we're the attorneys in the case.

Q And --

A I honestly don't remember.

Q Okay. But based on that letter that seems --

A Based upon that letter, the way it's phrased, I would assume that I wanted to speak with them -- it said in greater

length, so I'm assuming that probably the investigators had talked to them. I had some information.

* * *

Q Okay. And I assume at that time that you -- that you organized your file in that manner, per witness?

A Yes. Per witness, we would have separated them.

Q So any notes that are in those files would indicate the extent of the interview of the witnesses and what you were after?

A It -- Yeah. I think it probably would. I honestly don't -- It's been so long I don't recall specifics.

Q I show you again just another example of Respondent's Exhibit Number 44.

A Yes.

Q That is a previous employer of Mr. Alderman; is that correct?

A Yes.

[256] Q Again those would be notes concerning --

A Looks like my handwriting -- my handwriting has changed since then -- in all honesty it's hard to read.

Q And that would be the witness preparation file for that --

A I think so. That's correct.

Q -- witness? If the records showed, Mr. Schiavone, that the character witnesses were asked essentially character opinion questions and no details concerning Mr. Alderman's life experiences, the witness's knowledge of them, did you have a tactical or strategic reason for not asking those questions?

A No tactical or strategic reason I can think of, just probably didn't ask them. I think at the time -- I mean I can give you my -- how I view it now with 15 years of experience.

MS. GOLDBERG: And, Your Honor, I would object to that.

BY MR. DUNN:

Q I just want to know what your thought process would have been at that time.

A I think --

THE COURT: I'm sorry. I didn't hear the question.

THE WITNESS: I think I thought --

THE COURT: I apologize. I'm sorry. What was the question?

MR. DUNN: The question was, Judge, whether he had a [257] strategic or tactical reason for not asking these witnesses.

THE COURT: Okay. I'll let you ask him that.

THE WITNESS: I don't know of any. I mean I -- I'm thinking the character evidence we probably were thinking that that was the extent that we could go into at the time.

BY MR. DUNN:

Q You believed that was your limitation?

A I be -- That's my feelings in looking at that.

Q And since that time, in fact in the last week, I've talked to you about things that you did not know about in Mr. Alderman's life; is that correct?

A That's correct.

Q And those are the kind of things that you did not investigate?

A That's correct.

Q For example, the --

MS. GOLDBERG: Objection, Your Honor, he's testifying.

THE COURT: Don't testify. Just ask him a question, please.

BY MR. DUNN:

Q Mr. Schiavone, were you aware of the way that Mr. Alderman's eye was injured, the specifics of that?

[illegible] A I think I was aware that his eye was injured. I think I p[illegible]obably asked something about that at trial. But I don't know that I knew the extent of the factual background of that injury.

Q And is that the kind of stuff that is normally useful to present to a jury in a capital crime?

A Absolutely.

Q Did you have any tactical or strategic -- Did you try to get records from Mr. Alderman's background; either medical records, educational records, or the records of that type?

A I honestly don't remember. If I did they'd be in the file.

Q And if you did not do that did you have any tactical or strategic reason for you not doing that?

MS. GOLDBERG: Objection, Your Honor, he stated he couldn't remember whether he did it or whether didn't do it.

THE COURT: Well, if he can't remember then you can't ask him the question.

BY MR. DUNN:

Q If those are not in your file would that be an indication that you did not do that?

A Yes.

* * *

BY MR. DUNN:

Q Mr. Schiavone, did you present testimony from correctional officers in Mr. Alderman's --

A Yes.

Q -- resentencing? Do you recall how many testified?

A I honestly don't.

Q More than one?

A Yes.

Q And what was your purpose in presenting that testimony?

A My recollection, which is still -- it's fairly vague on the issue, was that because Jack had been in prison for 10 [261] years prior to resentencing there wouldn't be a lot of information concerning Jack as a person except for that period of time since his first trial.

I know I had conversations with Mr. Alderman. I mean I don't remember specifics about them, but I'm inclined to think that either he told me or he may have told Terry that -- about these particular guards at the prison, about his conduct when he was in prison.

We felt like that was positive and that that would be something that might influence the jury to show them an innocent man -- that this was the conduct of an innocent man, even when he was put on death row.

Q Okay. And it was clear to you that at that time that the jury was going to realize that Mr. Alderman had already served ten years in prison; is that correct?

A Yes. I felt that there was no way to get around that, that he was already on death row.

Q Did you contemplate the possibility that that evidence could in fact be harmful?

A No.

Q Have you thought --

A Well, let me correct that. I mean it was -- it was -- Yeah. I don't want to say that I didn't think about that generally because I think we probably did discuss the pros and cons of that.

[262] That would have been based on the fact that the jury -- whether or not they knew he was on death row. I think once -- You know, we said obviously they're going to know this is a retrial; that that was already going to be a given; so that that was already -- if it hurt us that already hurt us.

And then, you know, we considered the possibility of putting some of these witnesses up depending on what they had to say.

Q Right. And did you ever consider the possibility that testimony from these guards as to Mr. Alderman's character as a good inmate could actually cause the jury to think about parole?

A I didn't. I mean I -- Now it seems pretty clear to me that that was a possibility.

MS. GOLDBERG: Objection, Your Honor.

THE WITNESS: But at the time --

THE COURT: On what ground?

* * *

APPENDIX R

STATE OF GEORGIA)

COUNTY OF CHATHAM)

AFFIDAVIT OF JACK L. ALDERMAN

Comes now Jack L. Alderman, who after being duly sworn by the undersigned authority, does depose and say:

1. I, Jack L. Alderman, am over eighteen year of age and am competent to testify about the matters contained in this statement. This sworn statement is based upon my personal knowledge.

2. I am the father of Jack Edward Alderman ("Jackie"). Jackie was born in 1951 to myself and my then wife, Mary Edwards Alderman. In the end of 1954, my wife left me, taking Jackie, my daughter Teresa, and my wife's daughter from a previous marriage. Soon after that, the kids were taken from her because of some trouble she got into in Savannah. While I'm not sure exactly what kind of trouble she got into, I do know that she was given a one way ticket out of Savannah and told not to return. The lawmen had been watching her for some time and finally caught up to her. Jackie's mom was what I would call a kleptomaniac and would steal everything she could. In the early 1950's, I got a call from somebody at Sears and that person said that she was stealing from them, but they never could catch her. When she left me, she left me broke. There was a teenage girl named Fleming who lived with Jackie's mom at this time, and she was sent to a juvenile detention facility in Atlanta at the time that Mary was shipped out of Savannah. Jackie and Teresa came to live with me, my mom, and my step dad when all this happened.

3. Mary got to the point where she denied Jackie and Teresa's existence. She never wanted to have anything to do with her kids. I later heard that she moved to Alabama and got married.

4. Shortly after gaining custody of the kids, my parents, my aunt and uncle and I took Jackie fishing. He was only four years old, but really excited about the prospect of catching a fish. We knew that he was not going to have any luck so we caught a fish and tied it off on a line so that Jackie would think that he had caught the fish. We left the fish on the line and Jackie would pull it in and out of the boat. At some point he apparently decided that the fish should be let go. He picked up a filet knife we had with us and started to cut the line pulling the knife toward him. My aunt saw this but could not get to him soon enough. The knife cut through the line and stabbed Jackie in the left eye.

5. Jackie was bleeding profusely and obviously in a lot of pain. It was very traumatic for all of us. We rushed Jackie to St. Joseph's Hospital. He was crying and we were concerned that he might go into shock. He was admitted to the hospital and was treated there for over five weeks. The doctors said that any injury of that type is very painful. They were not sure if the damage to his eye would be permanent. Throughout this time, Jackie was a good boy and patient. Despite the pain, he did not complain a lot and listened to the doctors, nurses, and my parents and myself.

6. Eventually, Jackie was released from the hospital. He still had the patch on his eye for a while. A short time later the patch was removed. The doctors were still not sure if he would have full use of the eye and they thought it would be sometime before they knew for sure. As a reward for his good behavior, my mother gave Jackie two nickels to go get two sodas at the neighborhood store. She was with Jackie but behind him letting him get the sodas and pay for them himself. As Jackie

was reaching into the soda box to pull out the sodas, a local mentally retarded teenager grabbed Jackie from behind and violently attacked Jackie with a broken off rusty hacksaw blade. In front of my horrified mother, he stabbed Jackie in his recently injured left eye with the blade. The trauma of the first injury was nothing like this cruel twist of fate. Bleeding and in excruciating pain, Jackie was taken back to St. Joseph's Hospital.

7. His stay in the hospital was shorter this time. There was no doubt now that Jackie would never regain his sight in the left eye. Again, the pain of the injury took its toll on Jackie. Added to that pain was the fact that this time he had been violently attacked by another boy. This was a very difficult time for Jackie. The doctors talked to us all about leaving the eye in or removing it and replacing it with a glass eye. The doctors explained that there was not [sic] medical advantage to either choice. Rather, their concern was over which choice would result in less ridicule from Jackie's peers as he grew up. It was a difficult decision -- and one we would eventually regret -- but we decided not to replace the damaged eye. Attached to this affidavit is a school picture of Jackie taken after the second injury to his eye. (Attachment A).

8. Unfortunately, Jackie received no counseling after being attacked and losing the sight in his eye. Although Jackie was not one to complain, the violent attack and the loss of his eye had a profound affect [sic] on Jackie throughout his life. He was picked on at school by his peers. At times, he would become discouraged and depressed. Through it all though, Jackie never gave up. He was a likeable boy with lots of friends. In fact, I think that he worked harder to make up for his handicap.

9. When Jackie came to live with me, I was gone a lot of the time, working on the railroad. I worked the 3:00 – 11:00 p.m.

shift and frequently worked overtime. I had to travel a lot for work and spend many nights away from home. Unfortunately, because of my work, I was not able to be home with my kids very often. Jackie was a good kid and helped around the house and was always respectful to his elders. He never caused me or my parents any trouble and always did what he was asked to do. When Jackie started school, there was a talk that he should be put in a special ed class because the teachers thought he would not be able to keep up with his peers with only one eye. My mother would not stand for this and Jackie was placed in a regular class. He did really well in school. I remember one PTA meeting I attended where Jackie's teachers told me that Jackie was able to do work two years above his grade level. I remember feeling proud that the teachers seemed to be impressed with my son.

10. Jackie and I loved to fish together. We caught lots of trout, bass, and whiting. We also went to the beach a lot together. Jackie loved the beach and swimming in the ocean.

11. Jackie was well-liked and well-respected by everyone he came into contact with. Once, when he was in high school, a collection agency called the school and said that there was a job opening with the company. The person at the school recommended my boy for the position, saying that he was a hard worker and one of the brightest in the class. Because of his disability, there were some jobs that he couldn't do, but he could do the one for the collection agency. Attached to this affidavit is a picture of Jackie and myself when Jackie was in high school. ("Attachment B").

12. In Jackie's sophomore year of high school, tragedy struck Jackie again. Ironically, it also dealt with his sight. He started having problems with vision in his right eye. His vision would blur at times and then get better. Then he woke up one morning and could not see out of his good eye. Everything was

just a blur. We took him to the doctors and they did all kinds of tests but could not determine what the cause was. The prognosis was that Jackie would never see again. The teenage years are difficult enough to deal with, but Jackie['s] loss of vision had a profound effect on him. In a matter of a night, Jackie went from an active normal teenager to a teenager suddenly unable to see and thus unable to do what he had been able to do before. This was a difficult period for Jackie and my parents and me.

13. After consulting with the doctors and the school, it was decided that Jackie would have to go to school at the Georgia Academy for the Blind in Macon, Georgia. The loss of his sight was bad enough. Being separated from his family and friends just added to the toll on Jackie. He did fairly well at the Academy for the Blind but struggled with his loss of sight. It was hard for Jackie to remain positive during this period. A doctor affiliated with the Academy recommended that Jackie's damaged eye be surgically removed. Jackie's eye was removed and replaced with a glass eye.

14. After completing a year at the academy for the blind, Jackie decided that he did not want to return to the Academy. He was very depressed at the Academy and thought that being home would be better for him. Remarkably, his eye sight was also improving. The doctors believed that the removal of the bad eye relieved pressure in the good eye and Jackie eventually regained sight in his right eye. He was able to complete his senior year in Savannah.

15. Jackie has always been a loving and thoughtful son. He has always sent me cards on my birthday, Christmas, Father's Day, and other holidays. When I have been sick, he has always kept close tabs on me, even when he has been locked up. In 1978, I was hospitalized for some time after having surgery on my sinuses. It was a difficult period for me, and I felt miserable.

Jackie wrote to me a lot during this time, and sent me some poetry, which is attached to this affidavit ("Attachment C"). His letters and writings always cheer me up and put me in a great mood. It is wonderful to be a father who knows that his son truly loves and cares for him. I am grateful to be able to call Jackie my son. Of my children, he is the one I am closest to. I love him with all my heart and do not want to see him die. It would break my heart.

16. I never got the chance to tell any jury the information presented here. I wished I could have. I wish I could have told the jurors at Jack's trial in 1984 that Jackie has a lot of good in him and that he shouldn't die. I wish I could have told them about all of the joy that Jackie gives me and gives other people that he has contact with. I didn't get that chance, because I didn't know that I could say all of these things. I had only been interviewed by Jackie's attorneys one time and they had not asked me about Jackie or his childhood or about his medical problems. When I took the stand at the resentencing, I didn't know what questions they were going to ask me and I had no idea what I was to talk about. His attorneys asked me a few questions and it was over with. They basically asked me the same thing I had been asked at the first trial. I have never told anyone associated with Jackie's attorneys anything about the information contained here. No one representing Jackie has ever asked me about Jackie's family history until I was contacted over the past few days.

Further affiant saith naught.

/s/ Jack L. Alderman

SWORN TO and SUBSCRIBED before me, this 22nd day of April, 1999.

s/ [illegible]

Notary Public, State of Georgia

My Commission Expires:

Notary Public, Fulton County, Georgia

My Commission Expires July 12, 2002

APPENDIX S

STATE OF GEORGIA)

COUNTY OF CHATHAM)

AFFIDAVIT OF CATHERINE THOMPSON

Comes now Catherine Thompson, who after being duly sworn by the undersigned authority, does depose and say the following:

1. I, Catherine Thompson, am over eighteen and am competent to testify to the matters contained in this affidavit. This statement is based upon my personal knowledge and belief.

2. I was married to Jack E. Alderman ("Jackie") from 1969 to 1971. I first met Jackie when I was about 14 years old and were [sic] were both in high school. We dated for a couple of years and then got engaged on my sixteenth birthday.

3. Jackie and I got married right after we both graduated from high school. During the time I was with Jackie, I never knew him to be violent. If we had a fight or disagreement, we would talk about it. He was not the type of person to get physical or throw things when he was mad. He never hit me or got violent with me in any way, and I never saw him fight with anyone else either. In fact, one time Jackie broke up a fight between my brother and my foster brother. I would describe Jackie's temperament as very mild-mannered and even-keeled. He was not the type of person who would lose his temper or get out of control.

4. I knew Jackie before he went to the School for the Blind in Macon. I was always struck by his ability to adapt to having lost his eye. Jackie adjusted relatively well to his loss of sight, although it gave him a fit sometimes because it would bother him when he read. Jackie read a lot, and he loved to write, too. Although he couldn't do a few things that other kids could do, like participate in some sports, he didn't seem to let that bother him. Jackie was very popular in school. He always had lost [sic] of friends, and many girlfriends. I think that people really liked him because he was friendly and easy going; he seemed to be the type of person that others were readily attracted to and people enjoyed being around him. He was also very smart and always did well in school.

5. When Jackie lost most of his vision in his right good eye, we were all shocked. I know that this was a very difficult time for Jackie. He had been so active and independent and suddenly he was blind. He did not like to talk about it. The decision to go to the Georgia Academy for the Blind was a difficult one for Jackie – having to leave his family and friends was not easy as a teenager. He would regularly come home for weekends by train. I was always impressed that Jackie would make this trip alone being unable to see.

6. Jackie and I got divorced after about two years of marriage. We had gotten married when we were very young, and our marriage just didn't work out. Jackie was not an abusive person and he did not abuse me in any respect.

7. When Jackie and I were going through our divorce, Jackie had already started to date Barbara, his second wife. He married her shortly before Tina, our daughter, was born. When Tina was still a baby, I went to Jackie and Barbara's house to talk to Jackie about child support. I expected Jackie to be home and Barbara to be out. Unfortunately, Jackie was not home, but Barbara was. I explained to Barbara that Tina had

some medical expenses that Jackie needed to pay for. Barbara got angry and said that there was no way that Jackie would pay for anything. I told her that he would most certainly pay for the medical needs of his child. Barbara continued to get angry and then she became violent and physically attacked me. I took out a protective order against her, which was in place for one year. I guess the protective order had an effect, because during that year, she did not bother me.

8. Although I testified at Jackie's frist trial, I was never contacted by any of his attorneys after 1976, either for an interview or to testify for him in 1984. My testimony at the first trial was limited to whether I had ever known Jackie to be violent and whether he was a truthful person – I didn't know that I could talk about other things because no one ever asked me. I had always supported Jackie and I would have been willing to take the stand on his behalf at the resentencing. However, I didn't even know that there was another sentencing hearing until after it was over. I don't know why the layers didn't try to find me. I would have been willing to tell them whatever I could remember about Jackie and our relationship and about what happened with Barbara. Had anyone told me that I could make a plea to the jury for his life, I would have done so readily. Jackie is a good man and should not be executed. Many people would grieve and suffer if he were put to death.

Further affiant saith not.

/s/ Catherine Thompson

Sworn to and Subscribed before me, this 28th [sic] day of April, 1999.

s/ Therese Piazza

Notary Public, State of Georgia

My Commission Expires:

Notary Public, Fulton County, Georgia

My Commission Expires Aug. 12, 2002

APPENDIX T

STATE OF GEORGIA)

COUNTY OF CHATHAM)

AFFIDAVIT OF TERESA R. CALLAWAY

Comes now Teresa R. Callaway, who after being duly sworn by the undersigned authority, does depose and say:

1. I, Teresa R. Callaway, am over eighteen years of age and am competent to testify about the matters contained in this statement. This sworn statement is based upon my personal knowledge.

2. Jack Edward Alderman ("Jackie") is my older brother by about three years. Jackie and I are the only children of Jack L. Alderman and Mary Edwards Alderman.

3. When I was three months old, my biological mother, Mary Alderman, left our family. Why she left, I do not know for certain. I remember hearing something about her being told to leave Savannah by the authorities and to never come back. Our biological mother never had any contact with me and Jackie. Once she left, we never saw her again. She completely abandoned us and left us without a mother.

4. There was one time when I tried to contact our mother. This happened many years after she left, when her mother died in Savannah. I attended the funeral and took with me many documents (birth certificates, marriage certificates, etc.,) to prove that she was indeed my biological mother. I wanted her to acknowledge that I was her daughter. I approached her at the funeral, and she became enraged at my presence. She

denied that the was the mother of me and Jackie, and called the police. The police came and arrested me and I had a hearing the next day. The judge at that hearing was the same judge who had presided over the custody hearing after Mary abandoned my family. He remembered that proceeding and understood why I did what I did. He said something to the effect of that I had a right to say whatever I had to say, considering what she did to Jackie and me. She abandoned us, and then pretended we never even existed. The hearing was the last time I saw our mother. When Jackie learned of this he was very upset.

5. After Mary (our biological mother) left Savannah, Jackie and I went to live with my daddy and his mama and his stepdaddy. We were not a very close family and there was little warmth or caring shown to us. I think that our family had a lot of problems. My daddy always worked a lot, and he drank a lot, so he really wasn't around very much. He spent very little time with me and Jackie. He was an absentee father while still being in the house. He gave us no guidance and no control, unlike the guidance and control I have given my own children. His solution for dealing with problems was to sweep them under the rug. He would rather send you away rather than to take the time to deal with issues and problems that you faced. Financially, he took care of us, but he never gave Jackie and me any love or support. He was a shell of what a father should be. I have never felt close to him and he has not been someone that I could count on for help during times in my life where I truly needed the support of my family.

6. My daddy's mama wasn't any better of a parent than he was. She didn't give any support and love either. In fact, she spent most of the time complaining about how she was burdened by having to raise Jackie and me. She really resented having to take on the responsibility of raising us and she

always expressed her resentment to us. There were many times when she would talk about all of the things she could have done if she didn't have to look after me and Jackie. She was never a mother to me and she was never a replacement for the mother that abandoned us. The things she said were very hurtful and emotionally abusive to us kids.

7. Jackie and I never got the foundation that all kids should get. We never had anyone to talk to, anyone to turn to. In fact, it was the opposite: we were repeatedly turned away and made to feel that we weren't worth much or cared for much. When I was 13 years old, my father shipped me off to Seattle, without warning or explanation, to live with my Aunt Marie. As a teenage girl growing up without a mother, I had a lot of problems which my father and my grandmother just didn't want to deal with. My daddy was busy working and my grandmother was very elderly. So, their solution was to send me away. I came back from Seattle when I was 16, but after being away, I knew I could never live in that house again. Immediately upon my return, I met a guy and got married just a few weeks later. It was a rash [sic] decision, but my father was absent for it and gave me no guidance in such an important decision. The real reason I got married so soon is because I couldn't bear to go back to my daddy's house.

8. Jackie is my only brother and a good man. I love him and I do not want to see him executed. He was [sic] a good heart and cares about people. I would love to tell a jury about his life and why he is worth sparing, but I never got the chance.

9. I was never contacted by any of the attorneys that represented Jackie. No one ever asked me about my memories about my brother or about our family life. I was never spoken to about being a potential witness for Jackie at either of his trials. I would have been willing to share this information with

the defense lawyers and would have been willing to testify on my brother's behalf.

Further affiant saith naught.

/s/ Teresa R. Callaway

SWORN TO and SUBSCRIBED before me this 4th day of May, 1999.

_____

NOTARY PUBLIC

State of Georgia

My Commission Expires:

Notary Public, Fulton County, Georgia

My Commission Expires Aug. 12, 2002

APPENDIX U

MEMORIAL MEDICAL CENTER

P.O. BOX 23089

SAVANNAH, GEORGIA 31403-3089

912-350-8000

Exhibit P57

CERTIFICATE

THE UNDERSIGNED, JANET LANE, A.R.T., M.H.S.A., certifies that she is a person responsible for the keeping of medical records for MEMORIAL MEDICAL CENTER, INC., and that the within and attached are true and accurate copies of the medical records of,

JACK ALDERMAN

which are kept in the aforesaid hospital.

THIS CERTIFICATE is given pursuant to O.C.G.A. 24-10-71 and 24-10-72 in lieu of the personal appearance.

s/Janet Lane, ART

JANET LANE, A.R.T., M.H.S.A., DIRECTOR OF HEALTH INFORMATION MANAGEMENT

Sworn to and subscribed before me, this 21st day of April, 1999

s/ [Illegible]

Notary Public, Glynn County, Georgia

My Commission Expires: October 31, 2000

CONSENT FOR TREATMENT AND OR OPERATION

[illegible]

Date: 5/2/67

Signed by: E. L. Reddick (Grandmother)

Witnessed by: R. Digon___

MEMORIAL HOSPITAL OF CHATHAM COUNTY
ALDERMAN, JACK

#161-473
ROOM 426A
DR. ROSENGART

Date: 5-2-67

medical HISTORY

This is a 15 year old, white male who appears in no acute distress.

CHIEF COMPLAINT: Blurred vision.

PRESENT ILLNESS: This 15 year old, white male, who except for losing his left eye in childhood, has been healthy. In November, 1966 the patient had an increasing number of headaches and was seen by Dr. Reeves at this time, who treated him for eye strain. The patient uses his right eye totally. These subsided. Around Christmas time, 1966 the patient noted occasional blurred vision, which has gotten worse. He didn't have this checked, until February, when it got so severe he couldn't read. This improved slightly and got worse since this time. The patient had no nausea or vomiting, until yesterday while in the hospital.

REVIEW OF SYSTEMS:

PAST HISTORY: Has had the usual childhood diseases. No previous operations, except for that of his left eye. When the patient was 2½ years of age he stuck a knife in his left eye in a fishing accident. The patient was in the hospital at that time for 3 months and on discharge was able to see some out of the left eye. However the following day after discharge another child accidentally stuck a hack-saw blade in the left

eye, which totally blinded the left eye. The patient is unable to see anything out of this eye, except for a bright light. The patient had one episode of what he called acute indigestion about 2 years ago.

/s/S. N. Ramsey, M.D.

[SNR/MM]

MEMORIAL HOSPITAL OF CHATHAM COUNTY
ALDERMAN, JACK

#161-473
ROOM 426A
DR. ROSENGART

PHYSICAL EXAMINATION

GENERAL: This is a 15 year old, white male who appears his stated age. He is well nourished, hydrated, intelligent.

SKIN: Normal.

HEENT: Eyes; the left eye is completely opacified. The vision is limited only to a bright light when the other eye is blocked off. The right eye appears normal, externally. The pupils react, but on the funduscopic exam the disc margins are very indistinct. No other eye ground changes, that I can see. Mouth is normal. Ears; Tympanic membranes are visualized and normal.

NECK: No nodes or tenderness noted.

LUNGS: Clear bilaterally.

HEART: Normal sinus rhythm, without murmurs. It is normal size to percussion.

ABDOMEN: No masses or tenderness noted. Bowel sounds are good. Inguinal areas, no hernias noted or lymph nodes noted.

GENITALIA: Normal for this age male.

EXTREMITIES: No clubbing, cyanosis or edema.

NEUROLOGICAL: Patient walks without difficulty. Can stand with eyes closed without loss of balance. He can walk on heels or toes without difficulty. There is no weakness in the extremities and they are all equal bilaterally. There are no sensation losses in the extremities or trunk. Coordination excercises are normal. Visual acuity of the right eye is grossly limited to large bold print.

IMPRESSION: Rule out multiplesclerosis. Rule out optic neuritis.

s/S. N. Ramsey, M.D.

s/Carl Rosengart, M.D.

[SNR/MM]

MEMORIAL HOSPITAL OF CHATHAM COUNTY

PROGRESS NOTES

426A ALDERMAN, JACK
650 E 36 SAV GA W
M 15 S
ROSENGART-NAIS-REY 161473 PVT
MULT SCLEROSIS

5/2/67 14 Years Old: Patient admitted for evaluation & [illegible] optic neuritis present for a few months. Is traumatically blind in the Left eye and recently has had progressive [illegible] vision in the Right. On examination Right disc poorly outlined, engorged [illegible]

Implication: 1. optic neuritis

_____ 2. Possible M.S.

s/Carl Rosengart

5/2 Lumbar puncture

#18 needle inserted ascopdially at L3-4. Initial pressure 140. Fluid crystal clear.

Sent for cells protein, sugar, colloidal gold.

Will take fluid to [illegible] for globulins in CSF.

s/Carl Rosengart

MEMORIAL HOSPITAL OF CHATHAM COUNTY

progress notes

(CONTINUED)

5/5 Had momentary increases in vision but nothing persistent. Will begin to taper steroids.

s/Carl Rosengart

5/6 Will continue to taper steroids

s/C.L. Rosengart

5/6/67 [illegible] and phy dictated today

s/S.N. Ramsey

5/8 Subjectively vision has improved, but on testing has secocentral scotoma. On predriscone 10 mg ted. Will discharge & follow on outside.

s/Carl Rosengart

MEMORIAL HOSPITAL OF CHATHAM COUNTY

PROGRESS RECORD

Jack Alderman
Room 426 A
Dr. Reeves

Name: Jack Alderman

Age: 16

V.A. O.D. 20/[illegible] "blurred lines"

Room 14
Eye Clinic

MEMORIAL HOSPITAL OF CHATHAM COUNTY

PROGRESS NOTES

DISCHARGE SUMMARY

ALDERMAN, JACK

#161-473
DR. ROSENGART

ADMITTED: 5-2-67 DISCHARGED: 5-9-67

This is a 15 year old, white male who was admitted on 5-2-67 and discharged on 5-9-67. The patient lost the use of his left eye in childhood, secondary to trauma. About Christmas time, 1966 the patient noted occasional blurred vision in his right eye, which progressively became worse. He was seen initially by an opthalmologist who thought an optic nuritis present and placed on Steroids. On Steroids; however his visual acuity fluctuated. The patient was seen in my office with some questionable neurological deficit was noted.

On examination, except for marked decrease in visual acuity, in the right eye, as well as swelling and hyperemia of the optic disc. No neurologic deficit was noted. A Lumbar puncture was performed. One white cell was present. The protein was 25 mgs%, sugar 50 mgs%. There was insufficient fluid for a colloidal gold. The urine negative. Sugar 110, BUN 14, electrolytes were normal. The patient was placed on Prednisone 15 mgs a day and was maintained on this dosage for approximately 1 week. Subjective increase in vision occured; however this was not documented on quantative testing. Secocentral scotoma was noted in that eye. Steroids were further tapered and the patient was discharged to be followed [up] in my office.

FINAL DIAGNOSIS: Optic neuritis.

s/Carl Rosengart

C.L. Rosengart, M.D.

(LR/MM)

APPENDIX V

EXHIBIT
P58

Georgia Department of Education*

Office of Special Services

Georgia Academy for the Blind

2895 Vineville Avenue

Macon, Georgia 31204

(912) 751-6083 • FAX (912) 751-6659

Linda C. Schrenko

State Superintendent of Schools

April 27, 1999

Georgia Resource Center

303 Elizabeth Street

Atlanta, Georgia 30307

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* A residential school for children with visual handicaps and for nonsensory impaired multihandicapped students. Accredited by the National Accreditation Council for Agencies Serving the Blind and Visually Handicapped and the Southern Association of Colleges and Schools. An Equal Opportunity Employer

RE: Jack Alderman

TO WHOM IT MAY CONCERN:

Attached are copies of paperwork from Jack Alderman's file. This is to certify that these are official records. If you have any questions, please contact me at (912) 751-6086.

Sincerely,

s/Karen E. Grimes

Karen E. Grimes, Personnel Technician

/kg

nb: Copies made - 35 pages x 5 cents per page = $1.75

Notary Public Wilkinson County, Georgia

My Commission Expires January 7, 2002

CASE HISTORY March 25, 1968

JACK ALDERMAN

Jack is an intelligent boy and seems to have a good background in English. In typewriting, he learned new material quickly and was able to achieve very satisfactory skill levels in the first 24 weeks of school.

Jack strikes me as not learning as much as he could learn. He seems to just do enough to make the grade he wants and no more. I think he could be an excellent typist with better effort on his part.

In dealing with Jack outside of class, working on chapel programs, or talking in homeroom with him about the program for the Junior Senior Banquet, he comments frequently in a negative manner about the subject at hand. This boy appears to be a leader but wants to direct his actions toward tearing things down instead of building them up. He could be a big asset to this school if we could direct his actions in the right way.

Jack understands how to get along with people. Anyone he wants to get along with, he can. He knows how to employ just the right method to bring them around to his way of thinking. He could be a very good student if we could challenge him.

Linda Brightwell

Case History Statement

Eddie Dulude

Jerry Ashley

Jack Alderman [✓]

2-14-68

Miss Carr reported to the principal that these two boys had put David Tanner, a day student, in the shower with his clothes on this morning before class.

These boys were paddled by the principal in the presence of Miss Carr and sent back to class. (YH)

CASE HISTORY

COUNTY: Chattham DATE: 5/12/68

STUDENT'S NAME: Jack Edward Alderman

B.D. 5/29/51

PARENTS' NAMES:

Father--Jack Lloyd Alderman, railway wrecking crew employee for 24 years.

Mother--The mother has remarried and has two children by her present husband.

Grandmother--Mrs. Abbie Reddick

ADDRESS: 650 East 36th Street, Savannah, Georgia

VISION:

Diagnosis O.S., retrobulbar neuritis, enucleated December 22, 1967. O.D., trauma, with [illegible] correction 5/300. Possibility of improvement, not favorable. Is a large print student learning braille which he reads visually; very dependent upon his remaining vision--uses a low vision aid. Is not motivated toward and does not believe it necessary to develop a tactual reading skill.

HOME ENVIRONMENT: Jack's parents have been separated for a number of years. The mother has remarried and has two children by this more recent union. She has completely disassociated herself from the first family. The grandmother is legal guardian of the children.

His left eye was punctured with a sharp object at approximately age 3; weakness in right eye is due to

sympathetic trauma. Since enucleation of left eye, Jack feels that there is visual improvement in the good eye.

Prior to attending this school he was under jurisdiction of the Juvenile Court. His younger sister, Theresa, age 14, was recently involved (ungovernable) in a juvenile court decision. Theresa's behavior and the father's unhappy involvement with another woman has caused the father to threaten suicide. Step-grandfather, age 84, in order to relieve himself of the home tension is visiting relatives in another town.

The father's employment with a railroad wrecking crew requires frequent absences from the home.

TEACHER'S EVALUATION:

Attitude Toward Others: Presents a nice courteous and pleasing personality.

Independence: Presently possesses sufficient vision for safe mobility; there is a probability of further vision loss. Travels unattended to and from Savannah by train.

Dependability: Average, needs strengthening. Evidences a slight reluctance to accept responsibility, possibly the result of meager parental control.

Self Confidence: Average. Needs to be engaged in endeavors in which he can find some success. This would reinforce his present weak self image, recently created by his weakening vision.

Academic Progress: Attended Savannah High School through the tenth grade. Academic grades in public school were mostly low average to average, failing in biology--probably due to visual difficulties.

Academic grades at GAB have been mostly average. Anticipates returning to Savannah High during his senior year in order to better prepare himself for college.

Vocational Objective: Desires to attend Armstrong College, Savannah, as a pre-law student.

Test Results: Administered the verbal WAIS on 9/19/67, attaining an I.Q. of 130. All subtest scores were above average with the exception of "Vocabulary" which was average. This score places him on the borderline of "Superior"--very superior--at the 97th percentile, and also was the possible repetition of a test previously administered him in Savannah while undergoing an evaluation in regard to social infractions involving a juvenile court decision.

With an objective achievement tests administered October, 1967, using a National Norm, he attained high average scores.

His CEEB, junior edition, scores on test administered in December 1967 were: Verbal 363 (47th Percentile); Math 593 (85th percentile). These scores are a good prognosis of successful completion of college. All tests indicate an excellent potential for academic proficiency.

SUMMARY

Jack has visually learned to read and write braille but he is fighting against learning tactual reading. He actually believes his verbal reading skill is improving, and is actually planning on taking summer courses particularly in math, in order to prove his theory and better prepare himself for college participation. If his summer venture is successful, he plans to complete his senior high school year at Savannah High.

He believes he has benefitted from his attendance at GAB. Repeated references to his being blind while attending

Savannah Public Schools has caused him to develop an inferiority complex. He is gaining more confidence in himself and desires to test his capabilities in the sighted world. He was counseled to return to this school for his senior year as there will be less probability of his being involved in additional juvenile infractions. His present home environment is not conducive toward motivation for self improvement.

There has been weak communication between he and his father, complete abandonment by the mother, but fortunately, relationships with the grandparents have improved. This lack of home support has been a threat to his development of a normal self concept and proper control of his instinctive impulses, causing the consequent development of a reluctance to submit to the binding restrictions placed on him by the society in which he lives. He is in the process of and has the intelligence to overcome these liabilities.

C.O. Mims

Guidance and Counseling Officer

APPLICATION FOR ADMISSION

GEORGIA ACADEMY FOR THE BLIND

2895 Vineville Avenue

Macon, Georgia 31204

Date: July 12, 1967

1. Give name of applicant: Alderman, Jack

2. Home address: 650 E. 36th, Savannah

   County: Chatham, Sex: male, Race: white

3. Give date of borth: Year 1951, Month May, Day 29

4. Where was applicant born? Town: Savannah

   County: Chatham, State: Georgia

5. Was the applicant born with sight impaired? No

   If not, at what age was sight impaired? 3 + 15

6. Has the applicant been examined by an ophthalmologist (M.D.)? Yes. When? May 10, 1967. By Whom? Dr. J. Reeves Jr.

7. Give cause of blindness, if known: left eye punctured at 3 and 15. Permanent optical neuritis in right.

8. Is blindness total? left eye. Partial: right eye.

9. Have any operations ever been performed on the eyes? left eye

(a) What kind? Trauma. (b) By whom? Harry Duncan MD.

(c) Where? St. Joseph Hos. Savannah, GA. Date? Apr 1954

10. If applicant has any physical defects other than blindness, state them: No.

11. Has applicant ever been subject to convulsions, epilepsy, or spells? No.

12. Has applicant ever sustained any sever injury? No

(a) Kind? (b) Date

13. Has applicant ever had any other kind of operation? No

14. Is applicant now in good health and free from all contagious diseases? Yes

15. Has applicant received the following:

(a) Immunization against poliomyelitis? Dates

(b) Immunization against diptheria? Dates: 6-4-65

(c) Immunication against tetanus (lockjaw)? Date

(d) Immunization against smallpox? Date: 6-4-65

(e) Immunization against measles? Date

(f) Immunization against typhoid? Date

(g) Wasserman test? Date: Result

(h) Tuberculin Test? Date: Result

16. If your child requires additional immuzations and/or medical or dental examinations or emergency care while under the supervision of the school, do you give your consent?

17. Is your child allergic to any drug? Please list: No.

18. Has applicant ever had? (please give dates)

(a) Spinal meningitis

(b) Diptheria

(c) Theumatism

(d) Smallpox

(e) Whooping cough: yes

(f) German measles

(g) Scarlet Fever

(h) Measles (Red Measles): Yes, 1955

(i) Mumps: Yes, 1955

(j) Chicken pox

(k) Poliomyelitis

(l) Convulsions

19. Has any mental test been given? (a) Date: July 3, 1967

Result (IQ): Good

20. By whom: Mr. Willison, Physocologist

21. If no mental test has been given, please mark degree of mental ability: (a) Poor (b) Fair (c) Good

22. Can applicant (a) Wash himself? Yes

(b) Dress himself? Yes

(c) Feed himself? Yes

(d) Go to toilet alone? Yes

23. Has the applicant ever been to school or had any instruction before or since blindness?

(a) Where? Savannah High

(b) How Long? 2 yrs. (c) What kind?

(d) Please give highest grade complete in school: 10

24. Are the parents or guardian financially able to supply clothing and transportation of the applicant to and from the school? Yes

25. Are either of the parents blind or partially sighted? No

If so, what ws the cause of blindness?

26. Have other members of applicant's family ever attended a school for the blind? No. If so, please give their relationships and name.

27. Give names and ages of other children in family:

Teresa R. Alderman, age 13, Education 7

28. Are there any other members on either side of the family blind or with defective vision? If so, how are they related to the applicant? No.

29. During pregnancy did the mother have any of the following diseases? If so, in what month of the pregnancy did the illness occur?

(a) Influenza: Month of pregnancy

(b) Measles: Month of pregnancy

(c) 3-day Measles: Month of pregnancy

(d) Mumps: Month of pregnancy

30. Where there any problems during pregnancy? Explain

31. Was quinine used for treatment during pregnancy?

32. Was the applicant a premature baby? No. If so, at what month of pregnancy was applicant delivered?

Birth Weight – lbs. oz.

Forceps delivery? Use of Oxygen? How long in incubator?

33. Give full name of:

Father: Jack Lloyd Alderman. Birth date: 11-21-26. Living? Yes

Mother: Birth Date: Living?

34. Highest grade father completed in school: 12

Highest grade mother completed in school:

35. What is father's occupation? Carman. Name of firm: S&A Railway. Place of employment: Savannah, GA. Bus. Phone 2332325

36. What is mother's occupation. If employed, give name of firm and business phone.

37. If parents are dead, give name of guardian or nearest relative.

38. If parents are divorced, who has custody of applicant? Mrs. Abbie Reddick Grandmother (Father's mother)

39. Give full name and address of parents or guardian:

Name: Jack Lloyd Alderman – Mrs. Abbie Reddick

Street and Number: 650 E. 36th Savannah

Town: Savannah. Zone:

County: Chat. Nearest Telephone: 2327233

40. What is the religious denomination? Baptise

41. When family cannot be reached in an emergency, who can be contacted:

(1) Name: Semmie Robbins. Address: 20 W. Hull St. Phone: 2368859

(2) Name: Lillie Hall. Address: 1228 E. 52th. Phone FL4274

42. In case of emergency, do you give your consent to proceed with needed treatment, surgery, and anesthetic? Yes

43. Is applicant covered by a hospitalization insurance plan? If so, list company and group number: Travelers Ins. Co. RR GM 23000

CERTIFICATE

Parents or guardians, upon signing the application, agree to furnish the pupil with neessary clothing as prescribed by the school, transportation to and from the school, pay medical costs and provide spending allowances.

I agree and consent that photographs of my child, while resident at the Georgia Academy for the Blind, may be released for printing in newspapers, magazines, brochures and films. I understand the school administration will not use this photo release for unfavorable publicity.

I certify that the answers to the above questions are true and correct and I promise that, if the person for whom this application is made be admitted, I shall, in every respect in which I am concerned, conform to the rules and regulations of the school, and should he prove not to be a proper subject or should at any time prove to be a person who should not be in school, I shall immediately remove him when notified by the superintendent.

Signed: s/ Jack L. Alderman

(Parent or Guardian)

For school use only:

Applicant accepted? Yes X No. Date: 8-14-67

Date enrolled: 8-31-68

Grade placement:

Date terminated

(2)

No. 06-1478

FILED

MAY 31 2007

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

JACK E. ALDERMAN,

Petitioner,

v.

WILLIAM TERRY, WARDEN, GEORGIA DIAGNOSTIC AND CLASSIFICATION PRISON,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION ON BEHALF OF RESPONDENT

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May 31, 2007

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QUESTIONS PRESENTED

1.

Whether the federal courts' fact-specific application of *Strickland v. Washington*, 466 U.S. 668 (1984) and its progeny, in rejecting Petitioner's claim that trial counsel was ineffective during Petitioner's resentencing trial with respect to the investigation and presentation of mitigating evidence, fails to present any issue warranting certiorari review by this Court?

2.

Whether this Court should deny certiorari as to Petitioner's claim that the Eleventh Circuit allegedly "failed to apply" *Strickland v. Washington*, based on Petitioner's unsupported assertion that *Strickland* places a burden on trial counsel to justify the reasonableness of their sentencing phase investigation and strategy?

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BRIEF IN OPPOSITION ON BEHALF OF RESPONDENT

PART ONE

STATEMENT OF THE CASE

As the Eleventh Circuit noted, this case has "extended over thirty-two years" and has a procedural history which is "extensive and complex." *Alderman v. Terry*, 468 F.3d 775, 777 (11th Cir. 2006). Therefore, Respondent offers the following procedural history, subdivided into the various stages of Petitioner's trial, resentencing trial and state and federal post-conviction proceedings.

(a) Original Trial (1974-1975)

On June 14, 1975, Petitioner, Jack E. Alderman, was originally convicted in the Superior Court of Chatham County, Georgia, for the 1974 murder of his wife. Petitioner was sentenced to death for this offense on June 14, 1975.

(b) Original Direct Appeal to the Georgia Supreme Court and Denial of Certiorari by this Court (1975-1979)

On June 27, 1978, the Georgia Supreme Court affirmed his conviction and death sentence in *Alderman v. State*, 241 Ga. 496 (1978), *cert. denied*, 439 U.S. 991 (1978), *r'hrg denied*, 439 U.S. 1122 (1979).

(c) First State Habeas Corpus Proceeding; Denial of Application for a Certificate of Probable Cause by the Georgia Supreme Court and Denial of Certiorari by this Court (1979-1980)

Petitioner then challenged his conviction and death sentence by filing a petition for state habeas corpus relief. On June 4, 1979, the state habeas corpus court conducted a hearing and on that same date denied the application for habeas corpus relief. The Georgia Supreme Court denied Petitioner a certificate of probable cause to appeal. This Court denied Petitioner's petition for a writ of certiorari in *Alderman v. Balkcom*, 444 U.S. 1103, *r'hrg denied*, 445 U.S. 973 (1980).

(d) First Application for Federal Habeas Corpus Relief and Appeal to the Fifth Circuit (1980-1983)

Petitioner then filed an application for federal habeas corpus relief in the United States District Court for the Southern District of Georgia on June 27, 1980. As to this first federal habeas corpus petition, the federal habeas corpus court reviewed two issues raised by Petitioner and granted federal habeas corpus relief to Petitioner as to both Petitioner's conviction and death sentence. *Alderman v. Austin*, 498 F. Supp. 1134 (S.D. Ga. 1980).

On appeal from the granting of federal habeas corpus relief, the United States Court of Appeals for the Fifth Circuit affirmed the grant of relief as to Petitioner's death sentence, but reversed the grant of relief as to his conviction. *Alderman v. Austin*, 663 F.2d 558 (5th Cir. Unit B 1981); *Alderman v. Austin*, 695 F.2d 124 (5th Cir. Unit B 1983) (*en banc*).

(e) Resentencing Trial (1984)

Petitioner's resentencing trial was conducted on March 26-31, 1984 in the Superior Court of Chatham County, Georgia. At his resentencing trial, Petitioner was represented by trial counsel G. Terry Jackson and Michael Schiavone. On April 1, 1984, Petitioner was again sentenced to death. Represented by trial counsel, Petitioner filed a motion for new trial and an amendment thereto, which were denied on August 27, 1984.

(f) Appeal from Re-imposition of the Death Sentence and Denial of Certiorari by this Court (1984-1985)

Trial counsel also represented Petitioner on direct appeal to the Georgia Supreme Court. The Georgia Supreme Court affirmed Petitioner's newly imposed death sentence on February 28, 1985 in *Alderman v. State*, 254 Ga. 206 (1985). Petitioner filed a petition for writ of certiorari in this Court, which was denied on October 15, 1985 in *Alderman v. Georgia*, 474 U.S. 911, 106 S.Ct. 282 (1985). Petitioner then filed a petition for rehearing, which was also denied by this Court on November 18, 1985 in *Alderman v. Georgia*, 474 U.S. 1000 (1985).

(g) State Habeas Corpus Proceedings Challenging Re-imposed Death Sentence; Dismissal; Appeal to the Georgia Supreme Court and Denial of Certiorari by this Court (1986-1988)

Petitioner then filed a state habeas corpus petition in the Superior Court of Butts County, Georgia, on February 6, 1986. An amended petition for writ of habeas corpus was filed on June 16, 1987 and a second amended habeas corpus petition was filed on June 25, 1987. An evidentiary

hearing was conducted on June 29, 1987. The state habeas corpus court dismissed the petition on September 10, 1987, holding that all of Petitioner's claims were barred from review under principles of procedural default or *res judicata*.

On October 7, 1987, Petitioner filed an application in the Georgia Supreme Court for a certificate of probable cause to appeal the denial of his state habeas corpus petition. The Georgia Supreme Court denied that application on October 28, 1987. Petitioner then filed a petition for writ of certiorari in this Court, which was denied on March 7, 1988, in *Alderman v. Georgia*, 485 U.S. 943 (1988).

(h) Federal Habeas Corpus Proceedings Challenging Re-imposed Death Sentence; Denial of Petition and Appeal from Denial of Motion to Alter or Amend (1988-1990)

On June 20, 1988, Petitioner filed an application for federal habeas corpus relief in the United States District Court for the Southern District of Georgia. The federal habeas corpus court denied Petitioner relief on June 6, 1989. Subsequent to the entry of judgment, both Petitioner and Respondent filed motions to alter or amend. On June 22, 1989, the federal habeas corpus court entered an order denying Petitioner's motion. While Respondent's motion to alter or amend was still pending, Petitioner filed a notice of appeal. On August 10, 1990, the Eleventh Circuit dismissed the appeal of Petitioner, finding it lacked jurisdiction based upon Respondent's pending motion. *Alderman v. Zant*, 912 F.2d 1469 (11th Cir. 1990).

(i) Remand to the Federal Habeas Corpus Court; Order Granting In Part and Denying In Part, Respondent's Motion to Alter or Amend; Appeal and Dismissal of Appeal for Lack of Jurisdiction (1990-1991)

After the case was remanded to the federal habeas corpus court, the federal habeas court entered an order which was filed on September 20, 1990, granting in part and denying in part, Respondent's motion to alter or amend. Petitioner then filed an appeal challenging the decision of the federal habeas corpus court, at the same time challenging the Eleventh Circuit's jurisdiction to consider his own appeal due to the federal habeas court's failure to rule on an issue. On December 27, 1991, the Eleventh Circuit dismissed the appeal for lack of jurisdiction over a claim concerning the traverse jury.

(j) Federal Evidentiary Hearing; Denial of Federal Petition; Appeal to the Eleventh Circuit and Denial of Certiorari by this Court (1992-1994)

In the Eleventh Circuit's order of December 27, 1991, dismissing Petitioner's appeal, the Eleventh Circuit ordered that the federal habeas corpus court conduct a hearing on certain specified claims. This federal evidentiary hearing was conducted on May 18, 1992. Following the evidentiary hearing, the federal habeas court entered an order denying the petition on all grounds on June 22, 1992. On October 23, 1992, the federal habeas court granted Petitioner a certificate of probable cause to appeal. The Eleventh Circuit affirmed the decision of the district court and denied habeas corpus relief on April 14, 1994. *Alderman v. Zant*, 22 F.3d 1541 (11th Cir. 1994). Petitioner then filed a petition for a writ of certiorari in

this Court, which was denied on December 12, 1994 in *Alderman v. Thomas*, 513 U.S. 1061 (1994).

(k) Second State Habeas Corpus Petition, Amended Petition, Evidentiary Hearing and Denial of Relief (1994-1999)

Petitioner filed a second state habeas corpus petition in the Superior Court of Butts County, Georgia on December 22, 1994. An amended petition for writ of habeas corpus was filed on March 29, 1999. An evidentiary hearing was conducted on May 5-6, 1999. At this hearing, both of Petitioner's trial attorneys provided testimony as to their representation of Petitioner. The state habeas corpus court denied Petitioner's state habeas corpus petition, as amended, on December 29, 1999.

(l) Appeal from Denial of Second State Habeas Corpus Petition and Denial of Certiorari by this Court (2000-2002)

On February 25, 2000, Petitioner filed an application for a certificate of probable cause to appeal the denial of his state habeas corpus petition in the Georgia Supreme Court. The Georgia Supreme Court denied that application on January 10, 2002. Petitioner then filed a petition for writ of certiorari in this Court, which was denied on October 21, 2002 in *Alderman v. Head*, 537 U.S. 995 (2002).

(m) Application for Federal Habeas Corpus Relief (2003-2004)

Petitioner filed his application for federal habeas corpus relief in the United States District Court for the

Southern District of Georgia on February 10, 2003. Respondent filed his answer and a brief in support of the answer on March 28, 2003.

The federal habeas corpus court denied and dismissed Petitioner's petition for writ of habeas corpus on July 19, 2004. Petitioner filed a motion to alter or amend judgment on August 2, 2004, which was denied on August 3, 2004.

(n) Appeal to the Eleventh Circuit from the Denial of Federal Habeas Corpus Relief (2004-2006)

Petitioner filed a notice of appeal from the denial of habeas corpus relief on September 2, 2004. Petitioner's motion for a certificate of appealability was denied by the federal habeas corpus court on October 4, 2004.

On November 15, 2004, the Eleventh Circuit denied Petitioner's application for a certificate of appealability. On June 27, 2005, following an application to the *en banc* court for a certificate of appealability, the Eleventh Circuit granted Petitioner's certificate of appealability as to "whether Alderman's trial attorneys denied him the effective assistance of counsel in the penalty phase of his sentencing proceedings by failing to investigate and present to the jury his social-history background." *Alderman v. Terry*, 468 F.3d 775 (11th Cir. 2006).

The Eleventh Circuit affirmed the denial of federal habeas corpus relief to the Petitioner in *Alderman v. Terry*, 468 F.3d 775, 777 (11th Cir. 2006). The Eleventh Circuit affirmed the denial of federal habeas corpus relief to Petitioner as to his claim of ineffective assistance of counsel at the resentencing trial by finding the following:

> We conclude that the state court's application of Strickland was not objectively unreasonable, and that defense counsel's life-history investigation and presentation of mitigating evidence did not constitute ineffective assistance of counsel under *Strickland*. We also conclude that defense counsel's failure to present the evidence habeas counsel proffered at the evidentiary hearing did not constitute an error so "serious as to deprive the defendant of a fair trial, a trial whose result is reliable."

Alderman v. Terry, 468 F.3d 775, 793 (11th Cir. 2006).

In the instant petition for a writ of certiorari, Petitioner seeks review of the federal courts' fact-specific application of this Court's decision in *Strickland v. Washington*, 466 U.S. 668 (1984), in rejecting Petitioner's resentencing trial ineffectiveness claim.

PART TWO

STATEMENT OF THE FACTS

In its 1978 opinion, the Georgia Supreme Court summarized the evidence presented at Petitioner's trial as follows:

> On the afternoon of September 19, 1974, the appellant approached John A. Brown, a close friend, and asked for his assistance in the killing of appellant's wife, Barbara J. Alderman. The appellant told Brown that if he helped he would split one-half the proceeds of his wife's life insurance policy with him. At first Brown thought Alderman was only "kidding," but Alderman's persistence convinced Brown that he was serious.

Two days later the appellant called Brown and asked him to come over to his apartment in Chatham County. When Brown arrived the appellant handed him a 12-inch crescent wrench and told him, "it had to be done . . . all you have to do is hit her with the wrench." Brown hesitated, but after the appellant threatened him with a gun, Brown proceeded into the dining room where he struck Mrs. Alderman in the back of the head with the wrench. Mrs. Alderman screamed and ran into the living room where she was tackled by her husband. He held her down, and with Brown's assistance, attempted to strangle her. After she passed out, the appellant asked Brown if he thought she was dead. When Brown said "yes" the appellant said "well, stay here with her while I go open the bathroom door." Browned asked what for and the appellant replied "I'm going to drag her in there and drown her . . . I want to make sure that she doesn't do anything." Mrs. Alderman's body was then dragged into the bathroom and placed in the bathtub.

The appellant started running water in the tub while Brown attempted to clean bloodstains from the carpet where Mrs. Alderman's body had fallen. Brown then went back into the bathroom and saw Mrs. Alderman in the bathtub with water just over her face.

Brown and the appellant changed clothes and left the apartment. They stopped at a Piggly-Wiggly store where Alderman got $100 which he gave Brown for his help. From there they went to a bar and started drinking. At around 10 p.m. Brown and the appellant returned to the apartment. Mrs. Alderman's body was still in the bathtub, but only a small amount of water remained in the bottom of the tub. They picked her up out

the tub, put her body on a quilt and rolled her up in it. Her body was then placed in the trunk of her car. Brown drove the car while Alderman followed behind on a motorcycle. They drove to Rincan, Georgia, in Effingham County. When they arrived at Dasher Creek, Mrs. Alderman's body was taken out of the trunk and put in the driver's seat of her automobile. Brown put the vehicle in drive and released the emergency brake. The car rolled into the creek. Before leaving, Brown opened the door to permit the body to fall out. The two then departed on the motorcycle.

At trial the appellant testified in his own behalf. He denied having anything to do with the death of his wife. He testified that on the night in question he and his wife had engaged in a conversation concerning her inability to become pregnant. She had told him that because she was only half a woman she was going to leave him to allow someone else to better fill her position. She grabbed her pocketbook and went out the back door. Appellant testified that at approximately 7 p.m. he left the apartment and caught a bus to get a drink. He returned home at approximately 10 p.m. but his wife was not at home. He then decided to go to Rincan, where Mrs. Alderman's grandmother resided, in order to apologize to his wife. The appellant testified that when he crossed the bridge at Dasher Creek, he saw his wife's car in the creek. The door was open and his wife's body was lying under water. The appellant testified that she was dead. When he heard a car coming he got on his motorcycle and returned to a bar in Savannah. Appellant testified that he did not know why he had left his wife's body in the creek; that he recalled nothing of his trip

> back to Savannah; and, the fact that his wife was dead had completely left his mind. Appellant testified that he first realized the full facts surrounding his wife's death after being treated by a psychiatrist who was able to bring back his memory as to the events of that night. He stated that after being treated he realized that fear had caused him to leave his wife's body in the creek because he knew her family would blame him for her death.

Alderman v. State, 241 Ga. 496, 497-499 (1978).[1]

PART THREE

REASONS FOR NOT GRANTING THE WRIT

I. THE FEDERAL COURTS' FACT-SPECIFIC APPLICATION OF *STRICKLAND V. WASHINGTON*, 466 U.S. 668 (1984) AND ITS PROGENY, IN REJECTING PETITIONER'S CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL AT PETITIONER'S RESENTENCING TRIAL, FAILS TO PRESENT ANY ISSUE WARRANTING CERTIORARI REVIEW BY THIS COURT.

The majority of this petition for a writ of certiorari consists of Petitioner's re-argument of his claim that resentencing trial counsel rendered ineffective assistance, which was rejected by the state and federal courts under the standard of *Strickland v. Washington*, 466 U.S. 668

[1] In the Eleventh Circuit's opinion, the Circuit Court included an excerpt from an earlier statement of facts in a prior opinion. *See Alderman v. Terry*, 468 F.3d 775, 777 (11th Cir. 2006), citing *Alderman v. Zant*, 22 F.3d 1541, 1544-1546 (11th Cir. 1994).

(1984). Petitioner essentially urges this Court to act as a fact-finder and conduct a *de novo* review of his claim that Petitioner's two attorneys representing him during his resentencing trial rendered ineffective assistance by failing to investigate and present additional mitigating evidence.

Each court reviewing Petitioner's resentencing trial ineffective assistance claim conducted a thorough *Strickland* analysis using *Strickland's* touchstone of an "objective standard of reasonableness." *Darden v. Wainwright*, 477 U.S. 168, 184 (1986), citing *Strickland v. Washington*, 466 U.S. 668 (1984) (petitioner must show that "counsel's representation fell below an objective standard of reasonableness.")

The Eleventh Circuit began its analysis of Petitioner's resentencing trial ineffectiveness claim by referencing this Court's interpretation of the AEDPA principles governing a federal habeas corpus court's review of a state court decision. The Eleventh Circuit specifically observed that, "the Supreme Court provided guidance about how to interpret § 2254(d) in *Williams v. Taylor*, 529 U.S. 362, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000)." *Alderman v. Terry*, 468 F.3d 775, 791 (11th Cir. 2006).

The Eleventh Circuit proceeded to specifically acknowledge *Strickland's* two-prong test for reviewing ineffectiveness claims and the requirement that the Petitioner establish both prongs of *Strickland* "to mount successfully an ineffective assistance of counsel claim," in order to obtain habeas corpus relief as to his ineffectiveness claim. Citing *Strickland*, 466 U.S. at 687, the Eleventh Circuit acknowledged that, "there is not one 'correct'

way to provide effective assistance." *Alderman v. Terry*, 468 F.3d 775, 792 (11th Cir. 2006).

The Eleventh Circuit appropriately listed the various important elements of a *Strickland* ineffective assistance analysis including eliminating "hindsight" from the analysis; requiring a consideration of "the sum total of [counsel's] efforts" and recognizing that there is "no absolute duty to investigate particular facts or a certain line of defenses." *Alderman v. Terry*, 468 F.3d 775, 792 (11th Cir. 2006) (cites omitted).

The Eleventh Circuit also followed this Court's guidance in *Strickland*, as to a reviewing court's proper analysis of a claim that trial counsel was ineffective at the sentencing phase due to the failure to present sufficient mitigating evidence. *Alderman v. Terry*, 468 F.3d. 775, 792 (11th Cir. 2006).

The Eleventh Circuit rejected Petitioner's contentions that, "the state habeas court unreasonably applied *Strickland*'s standard as to the deficient performance prong of his ineffectiveness claims," and that the state habeas court based its decision on "unreasonable determinations of fact in light of the evidence before the court." *Alderman v. Terry*, 468 F.3d 775, 792-793 (11th Cir. 2006).

In finding that, "counsel was not required to examine every possible legal strategy or defense available," the Eleventh Circuit relied on *Strickland's* focus which emphasizes that a reviewing court should consider "whether the investigation supporting counsel's decision was itself reasonable." *Alderman v. Terry*, 468 F.3d 775, 793 (11th Cir. 2006), citing *Wiggins v. Smith*, 539 U.S. 510, 523 (2003). However, the Eleventh Circuit also correctly found

that *Strickland* did not mandate that there is any "magic" number of witnesses to interview or documents to review. *Alderman v. Terry*, 468 F.3d 775, 792 (11th Cir. 2006).

Citing *Strickland*, 466 U.S. at 689, the Eleventh Circuit noted the requirement that Petitioner overcome a strong presumption that any "action" of trial counsel constitutes "sound strategy." *Alderman v. Terry*, 468 F.3d 775, 792 (11th Cir. 2006).

The Eleventh Circuit reviewed the state habeas corpus court's decision rejecting Petitioner's sentencing phase ineffective assistance claim and found the following:

> We conclude that the state court's application of *Strickland* was not objectively unreasonable, and that defense counsel's life-history investigation and presentation of mitigating evidence did not constitute ineffective assistance of counsel under *Strickland*. We also conclude that defense counsel's failure to present the evidence habeas counsel proffered at the evidentiary hearing did not constitute an error so "serious as to deprive the defendant of a fair trial, a trial whose result is reliable."

Alderman v. Terry, 468 F.3d 775, 793 (11th Cir. 2006).

After examining the totality of the circumstances of Petitioner's resentencing trial in light of *Strickland* principles, including trial counsels' testimony, the guidance given to the witnesses who did testify,[2] the mitigation

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[2] As noted by the Eleventh Circuit there was mitigating evidence presented on Petitioner's behalf at the resentencing trial. "As for mitigating evidence, Jackson and Schiavone called as character witnesses eleven corrections officers, seven of Alderman's friends, and

(Continued on following page)

testimony actually presented at trial and the "lingering doubt" strategy adopted by trial counsel, the Eleventh Circuit found that Petitioner had not demonstrated that trial counsels' performance during the resentencing trial was deficient and had also failed to establish the requisite prejudice.

The Eleventh Circuit reached the following conclusions based on its review of the complete record, including both the resentencing trial transcript and the state habeas corpus evidentiary hearing:

> Often inherent in the choice to pursue one strategy is a latent decision not to engage in a different tactic or line of defense. While Schiavone responded that he could not think of a tactical reason for not pursuing more detailed responses from his witnesses about Alderman's life history, that is simply a reflection of the cardinal emphasis on the lingering doubt strategy. Even assuming that his attorneys were not fully aware of the scope of permissible mitigating evidence, Alderman would need to show that the approach they ultimately took "would not have been used by professionally competent counsel." *Harich v. Dugger*, 844 F.2d 1464, 1470 (11th Cir. 1988) (abrogated on other grounds). Given the state court's findings regarding counsel's skill, knowledge, and performance, coupled with the court's finding that "counsel performed both reasonably and effectively in their representation of Alderman," *Alderman v. Head*, No. 94-V-720 at 30 (Super. Ct. of Butts County Dec. 29, 1999), we cannot say that

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five of Alderman's previous employers or co-workers." *Alderman v. Terry*, 468 F.3d 775, 789 (11th Cir. 2006).

> Alderman was denied his constitutional right to competent representation.
>
> Addressing *Strickland's* second prong, prejudice, the state habeas court concluded that defense counsel's failure to introduce life-history evidence to the extent habeas counsel contend the Constitution requires caused Alderman no prejudice. The district court, reviewing that conclusion, agreed. Assuming, for the sake of argument, that counsel's performance failed to meet *Strickland's* first prong, we readily conclude on the record before us that "counsel's errors were [not] so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." 466 U.S. at 687, 104 S. Ct. at 2064.

Alderman v. Terry, 468 F.3d 775, 795 (11th Cir. 2006).

Petitioner's mere disagreement with the Eleventh Circuit's proper AEDPA review of Petitioner's resentencing trial ineffective assistance claim, applying this Court's well-settled *Strickland* test, fails to warrant this Court's exercise of its certiorari jurisdiction. This Court has repeatedly stated that, "We do not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnson*, 268 U.S. 220, 227 (1925) and *Texas v. Mead*, 465 U.S. 1041 (1984). This Court should decline to review the specific facts of Petitioner's case in light of the Eleventh Circuit's proper application of *Strickland,* appropriately conducting a totality of the circumstances review.

The fact that Petitioner questions the judgment of the Eleventh Circuit and the state and federal habeas corpus courts in rejecting Petitioner's claim that trial counsel at his resentencing trial were ineffective, also fails to support the grant of certiorari in this case. This Court emphasized in such cases as *Ross v. Moffitt*, 417 U.S. 600, 616-617

(1974), that this Court's certiorari review is discretionary and "depends on numerous factors other than the perceived correctness of the judgment we are asked to review."

This Court should deny certiorari in Petitioner's case based on the mere allegation by Petitioner that the Eleventh Circuit incorrectly rejected Petitioner's sentencing phase ineffectiveness claim. This Court should also decline Petitioner's invitation to have this Court conduct a *de novo* review of the specific facts proffered as alleged support for his claim of resentencing trial ineffective assistance due to trial counsel's "failure" to investigate and present additional mitigating evidence.

II. THIS COURT SHOULD DENY CERTIORARI AS TO PETITIONER'S CLAIM THAT THE ELEVENTH CIRCUIT ALLEGEDLY "FAILED TO APPLY" *STRICKLAND*, BASED ON PETITIONER'S UNSUPPORTED ASSERTION THAT *STRICKLAND* PLACES A BURDEN ON TRIAL COUNSEL TO JUSTIFY THE REASONABLENESS OF THEIR SENTENCING PHASE INVESTIGATION AND STRATEGY.

Petitioner urges this Court to grant certiorari to review the decision of the Eleventh Circuit, which decision he contends "failed to apply" *Strickland* in reviewing his sentencing phase ineffectiveness claim. (Petition, p. 20). However, Petitioner bases the alleged incorrectness of the Eleventh Circuit's decision on his unfounded assertion that there is a burden of proof on the trial attorneys who are alleged to be ineffective to justify their actions, which purported burden is not contained in this Court's decision in *Strickland* or its progeny.

Without reference to any portion of *Strickland* or to any binding authority from this Court, Petitioner creates a burden on the attorneys alleged to be ineffective to defend their actions. Petitioner alleges that, "the Eleventh Circuit's standard thus relieved counsel of the obligation this Court placed squarely on his [trial counsel's] shoulders – to demonstrate that this failure to investigate or present this mitigating evidence was based on a reasoned strategic or tactical decision." (Petition, p. 20).

The placing of a burden on trial counsel to prove that they made a strategic decision is not required by *Strickland*, but, in fact, is contrary to *Strickland*'s "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance"; *Strickland*'s acknowledgement that, "there are countless ways to provide effective assistance in any given case," and *Strickland*'s admonition that, "the object of an ineffectiveness claim is not to grade counsel's performance." *Strickland v. Washington*, 466 U.S. 668, 689, 697 (1984).

Contrary to Petitioner's assertion, *Strickland* does not direct that trial counsel defend themselves, but rather *Strickland* specifically instructs that a reviewing court examine trial counsel's conduct by judging, "the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Strickland v. Washington*, 466 U.S. 668, 690 (1984).

Of equal significance in rejecting Petitioner's newly-created "burden of proof" on the counsel alleged to be ineffective to justify their trial strategy, is the fact that neither *Strickland* nor the AEDPA places any burden of proof on the attorney alleged to be ineffective. *Strickland* places the burden of proof squarely on a petitioner

attempting to establish ineffective assistance to demonstrate trial counsel's deficient performance and resulting prejudice.

Although Petitioner seeks to obtain this Court's review by alleging that the Eleventh Circuit failed to follow *Strickland*, an examination of Petitioner's contentions clearly shows, in clear contravention of *Strickland* principles, that Petitioner is attempting to create a burden on trial counsel to make a hindsight analysis of their representation and attempt to justify their actions, investigation and strategy.

Rather than performing a superficial analysis of Petitioner's ineffectiveness claim, based solely on an out-of-context statement of one of Petitioner's trial attorneys, the Eleventh Circuit properly reviewed the totality of the circumstances of Petitioner's case. Applying well-settled *Strickland* principles, the Eleventh Circuit properly utilized AEDPA principles in rejecting Petitioner's claim that trial counsel were ineffective during Petitioner's resentencing trial and therefore, Petitioner fails to present any basis for granting certiorari review of the Eleventh Circuit's decision.

CONCLUSION

WHEREFORE, for all of the above and foregoing reasons, Respondent prays that this Court decline to exercise its certiorari jurisdiction and deny the instant petition for a writ of certiorari.

Respectfully submitted,

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No. 06-1478

In the Supreme Court of the United States

JACK E. ALDERMAN,

Petitioner,

v.

HILTON HALL,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITIONER'S REPLY BRIEF

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ARGUMENT

For the most part, Respondent's Opposition brief does not require a reply because it ignores virtually all of Petitioner's points. Respondent largely regurgitates both the procedural history of this case and the Eleventh Circuit's opinion below. Petitioner, therefore, submits this short reply only to correct a grievous misstatement made by Respondent.

Respondent claims that Petitioner seeks to place a new burden on trial counsel to justify the reasonableness of their sentencing phase investigation and strategy. That is wrong.

Petitioner merely seeks to hold trial counsel to the standard this Court articulated in *Strickland v. Washington*, 466 U.S. 668, 690-91 (1984): "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Counsel admitted that he made no strategic decision to limit his mitigation investigation; instead, he mistakenly believed that the law did not permit him to offer life-history evidence beyond that of Petitioner's character in mitigation. This admission, combined with the voluminous mitigating evidence that we now know counsel could have offered, demonstrates conclusively that counsel's investigation was not reasonable.

While the Eleventh Circuit acknowledged *Strickland*, the court adopted a standard that eviscerated it. Instead of asking whether counsel conducted a reasonable mitigation investigation, the court asked Mr. Alderman to prove that professionally competent counsel would not have adopted trial counsel's innocence (or residual doubt) strategy at the resentencing trial. *Alderman v. Terry*, 468 F.3d 775, 792 (2006) (citing *Harich v. Dugger*, 844 F.2d 1464, 1470 (11th Cir. 1988) (overruled on other grounds)).

The difference between the *Strickland* and Eleventh Circuit standards is significant. The former is a reasonableness standard that attempts to ensure that criminal defendants receive the effective assistance of counsel guaranteed by the Sixth Amendment without "requir[ing] counsel to investigate every conceivable line of mitigating evidence no matter how unlikely the effort would be to assist the defendant at sentencing." *Wiggins v. Smith*, 539 U.S. 510, 533 (2003). The latter abandons this purpose and asks generally whether competent counsel would have adopted the same resentencing trial strategy. The problem is that the answer to this question does not yield any information probative of the Sixth Amendment inquiry. It is entirely possible that competent counsel would have adopted the very same trial strategy as counsel at issue, but would not have limited his mitigation investigation in the same way.

Indeed, this case reveals the constitutional problem with the Eleventh Circuit's standard. While no one is questioning trial counsel's innocence strategy here, the prevailing professional norms demonstrate that competent counsel would not have limited his mitigation investigation the way trial counsel did here. The applicable professional standards require trial counsel to investigate a capital defendant's background for "all reasonably available mitigating evidence." *Wiggins*, 539 U.S. at 524 (citing ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 11.4.1(C), p. 93, 11.8.6, p. 133 (1989)); *see also* 1 ABA Standards for Criminal Justice 4-4.1, commentary, pp. 4-55 (2d ed. 1980). This Court has held that counsel who did not adhere to these prevailing professional norms violated a capital defendant's Sixth Amendment rights. *See Williams v. Taylor*, 529 U.S. 362, 396 (2000) (counsel's failure to introduce voluminous mitigating evidence was not justified by a tactical decision because counsel did not adequately investigate and therefore

did not know what the evidence was); *accord Wiggins*, 539 U.S. at 522; *Rompilla v. Beard*, 545 U.S. 374, 383 (2005).

CONCLUSION

The Eleventh Circuit's decision is contrary to *Strickland* and undermines a long line of significant decisions by this Court. Certiorari is warranted to bring the Eleventh Circuit back in line with the clearly established federal law as determined by this Court.

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PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner Jack E. Alderman respectfully petitions this Court to vacate its Order entered October 1, 2007, denying Mr. Alderman's Petition for Writ of Certiorari filed May 7, 2007. This Court should rehear and grant Mr. Alderman's Petition for Writ of Certiorari because the Ninth, Seventh, and Third Circuit Courts of Appeals recently issued opinions that demonstrate a real circuit conflict on an issue of considerable national importance: whether defense counsel has an obligation to investigate all available mitigating evidence in preparing for the sentencing phase of a capital trial. This conflict is an intervening circumstance of a substantial and controlling effect. *See Sanitary Refrigerator Co. v. Winters*, 280 U.S. 30, 34 n.1 (1929).

REASONS FOR REVIEWING THE ELEVENTH CIRCUIT'S DECISION

A real conflict has arisen among the circuits since Mr. Alderman filed his Petition for Writ of Certiorari. The Ninth, Seventh, and Third Circuit Courts of Appeals have held that a capital defendant's constitutional right to effective assistance of counsel obligates defense counsel to fully investigate all available mitigating evidence in preparing for the sentencing phase of a capital trial.

The Ninth Circuit Court of Appeals recently held that "[t]o perform effectively . . . counsel must conduct sufficient investigation and engage in sufficient preparation to be able to present[ ] and explain[ ] the significance of all the available [mitigating] evidence."

Lambright v. Schriro, 490 F.3d 1103, 1116 (9th Cir. July 2, 2007) (internal citations and quotation marks omitted) (emphasis added). The court emphasized that "it is imperative that all relevant mitigating information be unearthed for consideration at the capital sentencing phase." *Id.* (internal citations omitted).

Recognizing "counsel's duty to investigate all potentially mitigating evidence," the court concluded that "[o]nly after a thorough investigation can a less than complete presentation of mitigating evidence ever be deemed reasonable." *Id.* at 1120 (emphasis added). Counsel cannot uphold a defendant's constitutional right to effective assistance of counsel at the sentencing phase of a capital trial by conducting a truncated investigation and providing the jury with a cursory presentation of potentially mitigating factors. *Id.*

Similarly, the Seventh Circuit Court of Appeals recently acknowledged that investigations into mitigating evidence "should comprise efforts to discover all reasonably available mitigating evidence." *Stevens v. McBride*, 489 F.3d 883, 895 (7th Cir. June 18, 2007) (citing the ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 11.4.1(C), p. 93 (1989)) (emphasis added). In *Stevens*, the court acknowledged that although a decision by defense counsel not to investigate certain mitigating evidence might have been considered strategic during the guilt phase, this decision could not be considered strategic at the sentencing phase of a capital trial because the petitioner "had nothing left to lose." *Id.* at 896.

In another recent decision, the Third Circuit Court of Appeals recognized "the fundamental constitutional requirement that the fact-finder render a decision [in the sentencing phase of a capital trial] based upon full consideration of available mitigating evidence." *Taylor v. Horn*, No. 04-9016, 2007 WL 2728668, at *31 (3d Cir. Sept. 20, 2007) (emphasis added). The court stressed that defense counsel's investigation must include "efforts to discover *all reasonably available* mitigating evidence, including information about medical history, educational history, employment and training history, [and] family and social history." *Id.* (internal citations and quotations marks omitted); *see also Morris v. Beard*, No. Civ A. 01-3070, 2007 WL 1795689, at *22 (E.D. Pa. June 20, 2007) (stating, "Where a jury in a capital case has been precluded from hearing mitigating evidence concerning the defendant's character or background because counsel has made an objectively unreasonable decision not to look for it, counsel's performance violates the dictates of *Strickland*.") (citing *Rompilla v. Beard*, 545 U.S. 374 (2005); *Wiggins v. Smith*, 539 U.S. 510, 519-34 (2003)) (additional citations omitted).

These new decisions conflict with the Eleventh Circuit's decision below. While the Ninth, Seventh, and Third Circuits impose an obligation on defense counsel to fully investigate all available mitigating evidence, the Eleventh Circuit requires only that the trial court ask whether competent counsel would have adopted a trial strategy similar to that employed by capital sentencing counsel, regardless of whether there was additional available, but undiscovered, mitigating evidence. The Eleventh Circuit's standard is much

less exacting than the standard adopted by the Ninth, Seventh, and Third Circuits.

Here, counsel's investigation did not comprise efforts to discover all available mitigating evidence, nor did he engage in sufficient preparation to be able to present and explain the significance of what little mitigating evidence he did discover. Cert. Pet. App. 226a-30a; 233a-39a; 240a-41a; 250a-52a; 254a-56a. In so failing, counsel prevented Mr. Alderman's resentencing jury from rendering a decision based upon full consideration of all available mitigating evidence.

Mr. Alderman's case presents this Court with a clear opportunity to provide guidance to the lower courts on the applicable legal standard for upholding an individual's constitutional right to effective assistance of counsel at the sentencing phase of a capital trial. As shown in Mr. Alderman's Petition for Writ of Certiorari, there is a reasonable probability that, but for counsel's errors, the result of his resentencing trial would have been different. Cert. Pet. App. 263a; 278a-79a; 291a-94a. It is important for this Court to determine the appropriate legal standard, particularly because the difference between the Circuits' standards can mean the difference between life and death for Mr. Alderman and other capital defendants.

CONCLUSION

These recent decisions demonstrate a real circuit conflict on a question of considerable national importance that this Court should review without

waiting for additional courts to weigh in. Mr. Alderman respectfully requests that this Court grant certiorari and review the Eleventh Circuit's decision before the State of Georgia executes another individual who failed to receive his constitutional right to effective assistance of counsel.

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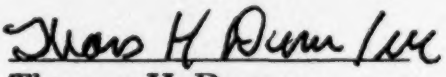
CERTIFICATION

The foregoing is restricted to the grounds specified in 44.2 S. Ct. R. and it is presented in good faith and not for delay.



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